United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14, 671

United States Court of Appeals
For the
District of Columbia Circuit
FILED DEC 26 1958
Joseph W. Stewart
CLERK

149

JOSEPH A. PAGLIOCHINI,
Appellant,

v.

UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Bill Austin Services, Inc.
Printers
Washington, D. C.
EX. 3-3239

INDEX

	Record Page	Appendix Page
Indictment		1
Excerpts From Transcript of Proceedings:		
Witnesses:		
Pearl L. Trenary		
Direct	3	3
Cross	8	6
Virginia Phillips		
Direct	9	7
Everett L. Kirkpatrick		
Direct	13	9
Cross	17	12
Irene L. Davis		
Direct	22	14
Cross	39	25
Cross (resumed)	52	32
Redirect	64	38
Laverne C. Mims		
Direct	65	38
Cross	79	46
Redirect	103	59
Paul Randolph Rollins		
Direct	110	62
Cross	117	66
Further Direct	122	69
Joseph Bonaccorsy		
Direct	127	70
Lynn S. Meredith		
Direct	132	72
Charge to the Jury	140	75
Judgment and Commitment		84

JOINT APPENDIX

[Filed April 8, 1958]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled February 27, 1958, Sworn in on March 4, 1958

The United States of America — Criminal No. 345-58

v. — Grand Jury No. 325-58

1. Irene L. Davis — Vio. 18 U.S.C. 495
2. Joseph A. Pagliochini
3. Laverne C. Mims

The Grand Jury charges:

On or about March 5, 1958, within the District of Columbia, Irene L. Davis, Joseph A. Pagliochini and Laverne C. Mims, for the purpose of obtaining and receiving from the United States, and from its officers and agents, five hundred and seventy-two dollars, falsely forged the endorsements "Pearl L. Trenary" and "John Moore" on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States. Following is a photostatic copy of said check with the falsely forged endorsements on the back:

TREASURY — Philadelphia, Pa. — 10,627,123

DIVISION OF DISBURSEMENT — Mar 4 1948

TREASURER OF THE UNITED STATES 15-51/000

PAY $ * * * 572 DOLLARS 00 CTS — $ * * *572.00*

TO THE ORDER OF — PEARL L TRENARY — 577-22-6422 H

DISAB INS BEN

4785 Huron Ave Apt 12
Washington 21
D C

/s/ S. D. Putnam
Regional Disbursing Officer

Drawn for Above Object

DO NOT FOLD, SPINDLE OR MULTILATE

/ KNOW YOUR ENDORSER - REQUIRE IDENTIFICATION/

9003

COPY OF BACK OF CHECK:

IDENTIFICATION

When cashing this check for the individual payee, you should require full identification and endorsement in your presence, as claims against endorsers may otherwise result.

The payee should endorse below in ink or indelible pencil.

If the endorsement is made by mark (X) it must be witnessed by two persons who can write, giving their place of residence in full.

It is suggested that this check be promptly negotiated.

/s/ Pearl L. Trenary

/s/ John Moore

/s/ Irene L. Moore

Initialled J.L.D. 3/ .7/58
Initialled J.B.

Initialled L.C.M. 3/12/58; Initialled S.L.S. 3/2/58; Initialled L.L.M. 3/8/58

SECOND COUNT:

On or about March 6, 1958, within the District of Columbia, Irene L. Davis, Joseph A. Pagliochini and Laverne C. Mims, with intent to defraud the United States, uttered and published as true and genuine to Everett L. Kirkpatrick, the paper writing in the form of a check drawn upon the Treasurer of the United States, with certain falsely forged endorsements on the back thereof, which check is described and set out in the first count of this indictment and is incorporated herein by reference, well knowing that the endorsements on the back thereof had been falsely made and forged.

/s/ Oliver Gasch

Attorney of the United States in
and for the District of Columbia

A TRUE BILL:

/s/ W. B. Rumple

Foreman.

[Filed October 28, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

vs. : Criminal No. 345-58

JOSEPH A. PAGLIOCHINI, :

Defendant :

Washington, D. C.

Tuesday, July 22, 1958.

The above-entitled matter came on for trial before THE HONORABLE HENRY A. SCHWEINHAUT, Judge, United States District Court for the District of Columbia, at 10:18 a.m.

APPEARANCES:

For the Government:

VICTOR CAPUTY, Ass't District Attorney

For the Defendant:

CHARLES S. SURES, Esquire

* * * * * * * * * *

3 PEARL L. TRENARY

* * * * * * * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Would you keep your voice up so that His Honor, the members of the jury, the defendant and his lawyer can hear you. Can you hear me well now? A. I can hear you.

Q. Will you state your full name? A. My name is Mrs. Pearl L. Trenary.

Q. Where do you live? A. 4785 Huron Avenue, Southeast, Washington 23, D. C.

Q. Were you living there on March 4, 5 and 6 of 1958? A. I was.

4 Q. How long have you been living there? A. I moved there May 15, 1957.

Q. Is that an apartment? A. That is Apartment 12, the third floor front.

Q. Who owns the apartment? A. Mrs. Aquilino.

THE COURT: How do you spell that?

THE WITNESS: The way it looks on the rent receipt is A-q-u-i-l-i-n-o.

THE COURT: I think you have got it right.

BY MR. CAPUTY:

Q. Do you know a person named Pagliochini? A. I don't know him but I have seen him.

Q. Do you see that person here in the courtroom? A. Yes, sir, I do. There is the gentleman right there.

Q. Which one? A. The one on the far side.

THE COURT: That is the defendant.

BY MR. CAPUTY:

Q. Do you know where that person whom you have pointed to was living in March of 1958? A. The last I knew he was in Apartment 13, which is the basement front.

THE COURT: Of your building?

5 THE WITNESS: Of my building, as I remember, at 4785 Huron Avenue.

BY MR. CAPUTY:

Q. Do you know whether there is any relationship between Pagliochini and Mrs. Aquilino who owns the apartment building? A. Yes, sir; mother and son.

Q. Now, in that apartment building, do you have a mailbox there? A. I do.

Q. What kind of mailbox is it? A. It is very strong, regular government-type mailbox. There are 16 of them there as I remember.

Q. Where are they in the apartment building? A. They are in the front hall. Immediately upon entering the apartment through the door, they are to the left.

Q. Are they on the wall? A. On the wall, very secure.

Q. Do you have a key? A. I do. I am the only one that has one for my box.

Q. Do you know whether there is a master key for all of the mailboxes? A. I don't, sir.

Q. Directing your attention to March of 1958, around the 5th of March, did you go to your mailbox? A. Yes, sir.

6 Q. Was there anything wrong with your mailbox? A. No, sir.

Q. Can you tell us whether you were receiving any disability compensation at that time? A. Yes, sir; I had not prior to this first check that covered a period of ten months.

Q. Were you expecting a disability check? A. I was, and had been over a period of five months and I had received a notice on the 4th day of March stating that I should have gotten the check.

Q. Were you expecting such a check? A. Yes, sir.

MR. CAPUTY: If Your Honor please, may I have this check marked as Government's Exhibit No. 1 for identification?

THE COURT: It may be marked.

THE CLERK: Government's Exhibit No. 1 for identification.

(Check was marked Government's Exhibit No. 1 for identification.)

BY MR. CAPUTY:

Q. I show you, ma'am, what has been marked Government's Exhibit Number 1 for identification, which is a check drawn on the Treasurer of the United States. I ask you to examine it and tell us whether you have

7 ever seen this before? A. I only saw it when Mr. Meredith brought it to me for identification of signatures on the back.

Q. Did you look at the face of the check? A. This is my name, Pearl L. Trenary.

Q. Would you turn the check over and look at the endorsement on the check. Is there an endorsement of Pearl L. Trenary? A. There is but it is not my signature.

Q. Did you place that endorsement on there? A. No, sir.

Q. Did you give this defendant or anyone else permission to place your name on the back of that check? A. I don't talk with -- I didn't know anyone to give them permission to write those, and still don't.

Q. Did you give this defendant permission to place your name on that check? A. I don't know him to talk to, but didn't make arrangements with him at any time.

THE COURT: Your answer is no?

THE WITNESS: No, sir.

BY MR. CAPUTY:

Q. Your place is in the District of Columbia? A. Yes, sir; Washington 23, D. C.

MR. CAPUTY: That is all I have, Your Honor.

8 CROSS EXAMINATION

BY MR. SURES:

Q. Now, Mrs. Trenary --

MR. SURES: Hasn't the check been introduced into evidence yet?

THE COURT: No, he has got it if you want to use it.

BY MR. SURES:

Q. Did you give Laverne Mims authority to sign your name on this check? A. I didn't know anyone called Mrs. Mims in this case.

Q. You didn't know Irene Davis? A. I don't know Irene Davis.

Q. You didn't give her authority to sign your name? A. No, sir; I had never seen those persons.

MR. SURES: I have no other questions, Your Honor.

THE COURT: You are excused, Mrs. Trenary.

(The witness left the stand.)

MR. CAPUTY: I would like to put on some witnesses so they can go back to work.

THE COURT: All right.

MR. CAPUTY: Mrs. Virginia Phillips.

9 Whereupon

VIRGINIA PHILLIPS

called as a witness by the Government and, after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your full name, please? A. V. M. Phillips.

Q. Can you please talk a little louder? A. V. M. Phillips.

Q. Where do you live? A. 1916 U Place, Southeast.

THE COURT: What Place?

THE WITNESS: Y-o-u.

THE COURT: That is the way it is spelled?

THE WITNESS: Yes, sir.

THE COURT: That is a new one on me. All right.

THE WITNESS: Yes, sir.

THE COURT: I will take your word for it.

BY MR. CAPUTY:

Q. What is your business or occupation? A. I am a teller at City Bank.

Q. Were you a teller at City Bank in March of 1958? A. That is correct.

10 Q. Any particular branch? A. Yes, sir; the Southeast office.

Q. Where is that at? A. Eighth and D Streets, Southeast.

Q. In the District of Columbia? A. That is right.

Q. I show you, ma'am, what has been marked as Government's Exhibit No. 1 for identification which is a check drawn on the Treasury of the United States. I ask you to examine it and tell us whether you have seen that before? A. Yes, I have.

Q. When was it you saw it for the first time? A. It was around the first week in March.

Q. Now, at the time you saw that check, Government's Exhibit No. 1

for identification, where was it you saw it? A. Mrs. Davis presented it to me at City Bank.

THE COURT: Who?

THE WITNESS: Mrs. Davis.

BY MR. CAPUTY:

Q. Do you know Mrs. Davis by sight? A. I do now, sir.

Q. At the time Government's Exhibit No. 1 for identification was presented to you by Mrs. Davis, can you tell us whether there was any endorsement on the back of that check? A. Yes.

11 Q. What endorsements were on it? A. Pearl L. Trenary.

THE COURT: You have got it there. Maybe we can see exactly what that endorsement is. Have you got it in front of you?

THE WITNESS: Yes.

THE COURT: Tell us exactly what the real endorsement is.

THE WITNESS: Pearl L. Trenary.

THE COURT: T-r-e-n-a-r-y?

THE WITNESS: Yes, sir.

BY MR. CAPUTY:

Q. That endorsement was on the check when it was presented by Mrs. Davis? A. Yes.

Q. Did you cash the check? A. No, sir.

Q. Did there come a time she left? A. Yes.

Q. Did there come a time Mrs. Davis returned? A. Yes.

Q. When did she return? A. She returned approximately an hour later.

Q. On that same date? A. Yes, approximately an hour later.

12 Q. When she returned the second time, can you tell us whether there was any other endorsement on the check? A. Yes, sir; there was a John Moore, who is a depositor at our bank.

Q. Do you have an account with John Moore? A. Yes.

Q. Did you cash it? A. I compared the signatures of John Moore and it looked slightly off to me so I refused to cash the check.

MR. CAPUTY: You may examine.

MR. SURES: No questions.

THE COURT: What day did you say that Mrs. Davis came to cash it?

THE WITNESS: Around the first of March. I don't know the correct date.

THE COURT: Is that all?

MR. CAPUTY: Yes, Your Honor.

THE COURT: You are excused.

(The witness left the stand.)

THE COURT: Ladies and gentlemen, I will take a ten-minute recess now. I want to caution you not to discuss this case during this recess or any subsequent recess or adjournment of the Court, either among yourselves or with anyone else, and that includes your own family in your own home. Don't read anything about the case if by any chance there should be anything
13 in the press about it. You will recognize it as your case by the first sentence in the story.

The reasons for those admonitions -- I suppose it is obvious -- is so that nothing whatever can influence your thinking about this case except the evidence you hear, the arguments of counsel and the instructions of the Court.

It is most important, ladies and gentlemen, to keep that admonition in mind even though I forget to remind you about it from time to time. Failure to observe this admonition could get you and all of us into trouble.

(Whereupon, at 11:25 a.m., a recess was taken.)

THE COURT: Proceed.

MR. CAPUTY: Call Mr. Kirkpatrick.

Whereupon

EVERETT L. KIRKPATRICK

called as a witness by the Government and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your name, sir. A. Everett L. Kirkpatrick.

Q. Where do you live? A. 1500 - 19th Street, Southeast, Washington.

Q. What is your business or occupation? A. I own and operate Mae's
14 Beauty Salon at 1418 Pennsylvania Avenue.

Q. Were you operating that beauty salon on March 5, 1958? A. I was.

Q. Do you know Irene Davis? A. I do.

Q. Do you know Laverne C. Mims? A. Yes.

Q. Do you know a person by the name of Pagliochini? A. No, sir.

Q. I show you what has been marked as Exhibit No. 1, for identification, which is a check drawn upon the Treasurer of the United States. I ask you to examine it, sir, and tell us whether you have seen that check before. A. I have.

Q. When was the first time you saw Government's Exhibit No. 1, for identification, that check? A. March 6, 1958.

Q. Where was it that you saw Government's Exhibit No. 1, for identification, on March 6, 1958? A. This check was presented to me and I was asked if I would cash it.

Q. Who presented it to you, sir? A. Mrs. Laverne Mims.

15 Q. At the time the check was presented to you on March 6, 1958, were there any endorsements on the back of that check? A. Two, sir.

Q. Which ones, sir? A. Pearl L. Trenary and John Moore, neither of which I knew at that time.

Q. When that check was presented at that time when there were two endorsements on it, did you cash it, sir, at that time? A. At that time, no, sir; I didn't. I told Mrs. Mims that I knew neither of these parties and since she was asking me for Mrs. Davis, that I would need Mrs. Davis' endorsement before --

THE COURT: She was asking you to cash the check for Mrs. Davis?

THE WITNESS: She brought the check to me, sir, and asked me if I would cash it. She said, "Mrs. Davis wants to know if you will cash this for her."

THE COURT: So you told her what?

THE WITNESS: So I told her not knowing these two parties on the check if Mrs. Davis would endorse it, I would at that time take it to the bank and have it cashed.

BY MR. CAPUTY:

Q. Do you know where Mrs. Davis lived? A. Mrs. Davis was a
16 tenant over our beauty shop at that time.

Q. Was that check returned to you? A. The check was brought back to me. Laverne at that time asked me on the strength of having the check and cashing it in the morning if I would give her $25 that evening.

Q. Did you give her the $25? A. I did.

Q. Do you know a police officer by the name of Bonaccorsy? A. I have seen him.

Q. On that day did you see Police Officer Bonaccorsy? A. Later in the evening.

Q. Where was he when you saw him? A. He was out in front of the beauty shop.

Q. At the time you saw the police officer, did you still have Government's Exhibit No. 1 in your possession? A. It was in the cash register.

Q. What day was it when Officer Bonaccorsy came? A. The same date, after that. I still had it.

THE COURT: It was the same day?

THE WITNESS: Yes.

BY MR. CAPUTY:

Q. Did you see Bonaccorsy leave? A. I saw him go upstairs and later on I saw him come out and stand in front of the beauty shop -- yes, sir.
17 Q. At the time you saw him come out, did you still have Government's Exhibit No. 1, for identification, in your possession? A. Yes, sir.

Q. Can you tell us whether anyone called for Government's Exhibit No. 1 for identification, after Officer Bonaccorsy left? A. It was after a few minutes. Mrs. Mims came downstairs and asked me if I would give her back the check, at which time she gave me back $23 of the $25 I had advanced

to her and said she would give me the other later.

Q. Your place of business at 1418 Pennsylvania Avenue, Southeast, is in the District of Columbia? A. Yes, sir.

* * * * * * * * * *

CROSS EXAMINATION

BY MR. SURES:

Q. Did Mrs. Mims ever pay you the $2? A. She gave me $1.00 and told me she would give me the other.

Q. She still owes you one dollar? A. One dollar.

18 MR. SURES: That is all.

THE COURT: Let me ask you please, sir: That check is for $572.00, the Government check?

THE WITNESS: That is right.

THE COURT: What was your arrangement with Mrs. Mims?

THE WITNESS: I advanced her $25 and told her at the time I would cash the check only if I could get to the bank, I didn't have that much money with me and if she would bring it down in the morning, I would take it to the bank and cash it. She said, "How about you keeping the check and letting me have $25 and give me the balance tomorrow?"

I said, "All right. If it's all right with you, it's all right with me."

THE COURT: Did she explain to you how she happened to have a $572.00, a check for that amount? And that she wanted you to cash?

THE WITNESS: She said that --

MR. SURES: I object if he is going to recite what she said.

THE WITNESS: How I happened to know?

THE COURT: The question is if I should have asked you that -- leave it for us to decide.

19 Come up here.

(At the Bench:)

THE COURT: You object?

MR. SURES: Yes, sir.

THE COURT: On what ground? Hearsay?

MR. SURES: Yes, sir.

MR. CAPUTY: I think it is hearsay. I am going to put Mrs. Mims on.

THE COURT: She is named as co-defendant, of course, in the case. I suppose that doesn't limit you.

I will sustain the objection.

MR. SURES: I have another question, Your Honor.

THE COURT: All right.

(In Open Court:)

BY MR. SURES:

Q. Mr. Kirkpatrick, are you the landlord of the premises where the beauty salon is? A. Yes.

Q. Mrs. Davis pays you rent every month there? A. Yes.

Q. Does she still live there? A. Yes.

Q. Didn't Mrs. Mims advise you to take rent money out of that check? A. That is what I was going to tell His Honor, but you didn't give me a chance.

20 THE COURT: I will have to ask you to forgive me.

Read the question and answer, I missed both.

(The reporter read the record.)

THE COURT: Now His Honor will give you a chance.

MR. SURES: He has answered the question.

THE COURT: How did that come about?

THE WITNESS: Mrs. Mims asked me if I would cash the check and take the rent out, that it was a friend of her mother's, Mrs. Davis, that the check belonged to. I assumed -- she didn't say so -- I assumed she owed her some money.

THE COURT: Don't assume anything for us.

Is it Miss or Mrs?

THE WITNESS: Mrs.

THE COURT: When she came to ask you for cash money on account for the check, did you already know her?

THE WITNESS: Yes.

THE COURT: And, of course, you had known Mrs. Davis?

THE WITNESS: Yes, I had known Mrs. Davis for several months.

THE COURT: How long have you known Mrs. Mims?

THE WITNESS: Approximately ten months.

21 THE COURT: Did you know at that time she and Mrs. Davis were friends?

THE WITNESS: Yes. As a matter of fact Mrs. Mims had stayed with Mrs. Davis upstairs.

THE COURT: She didn't live there?

THE WITNESS: No. She had been staying there.

THE COURT: Is there anything else?

MR. SURES: No, Your Honor.

THE COURT: You are excused.

(The witness left the stand.)

MR. CAPUTY: Call Mrs. Davis.

MR. SURES: May we approach the bench, Your Honor?

THE COURT: You may.

(At the Bench:)

MR. SURES: At this time I would like to ask for the statement, If I may.

THE COURT: Wait until she testifies.

MR. CAPUTY: I will give him the statement now.

(In Open Court:)

Whereupon

IRENE L. DAVIS

* * * * * * * * * *

22 DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your full name? A. Irene Davis.

Q. Where do you live? A. 1418 Pennsylvania Avenue, Southeast.

Q. Were you living at 1418 Pennsylvania Avenue, Southeast, in March of 1958? A. Yes, sir.

MR. SURES: I can't hear the witness.

THE COURT: See if you can speak a little bit louder. Try to keep your voice up a little.

BY MR. CAPUTY:

Q. Do you know Laverne C. Mims? A. Yes, sir.

Q. Is she any relation to you? A. My niece.

Q. Do you know one named Joseph A. Pagliochini? A. Yes, sir.

Q. Do you see him here in the courtroom? A. Yes, sir.

Q. Would you point him out? A. Over here (indicating.)

THE COURT: That is the defendant.

MR. CAPUTY: Thank you, Your Honor.

23 BY MR. CAPUTY:

Q. I show you, ma'am, what is marked as Government's Exhibit No. 1 for identification, which is a check drawn on the Treasurer of the United States. I ask you to examine it and tell us whether you have seen that check before? A. Yes, sir.

Q. When was it you first saw Government's Exhibit No. 1, for identification? A. I believe it was on the 5th of March.

Q. Where was it -- where were you when you first saw Government's Exhibit No. 1, for identification? A. In my apartment.

Q. And did anyone have Government's Exhibit No. 1, for identification, when you first saw it? A. Mr. Pagliochini had it.

Q. Now, at the time you first saw Government's Exhibit No. 1, for identification, did it have any endorsement on the back, any name written on the back of the check when you first saw it? A. Not when I first seen it; it didn't.

Q. When you first saw Government's Exhibit No. 1, for identification, in the possession of Pagliochini on March 5, 1958, will you tell the Court and the jury what, if anything, he told you about Government's Exhibit No. 1?

A. He asked me if I could cash this check for him or knew where I could get
24 it cashed.

Q. Was anything said by Pagliochini as to whose check it was? A. He said it belonged to his wife.

Q. Was anything else said by him? A. Only that he said his wife had moved his furniture from the apartment and that he had the check and he thought he was entitled to the money for the check.

Q. Did you make any effort to cash that check, Government's Exhibit No. 1, for identification? A. Yes, sir.

Q. And at the time you made an effort to cash it was Pagliochini with you? A. Yes, sir.

Q. Did you see anyone place the endorsement of Pearl L. Trenary on the back of that check? A. Mr. Pagliochini did.

THE COURT: Where were you when he did that?

THE WITNESS: We were at 8th and H Streets. Eighth and H, Northeast, near a bank, on the corner.

THE COURT: Near a bank?

THE WITNESS: Yes, sir.

THE COURT: He wrote the name Pearl L. Trenary while you were on the street?

THE WITNESS: Yes, sir. Just before we got to the bank.
25 THE COURT: Where did he write it?

THE WITNESS: He wrote it over on the dashboard of the car.

BY MR. CAPUTY:

Q. You were in the automobile? A. Yes.

Q. Whose car was it? A. His car.

Q. Was anyone else with you at the time Pagliochini wrote the endorsement Pearl L. Trenary on the back of that check? A. Yes, my niece was with us.

Q. Is that Laverne Mims? A. Yes, sir.

Q. Was she there at that time, too, in the automobile? A. Yes, sir.

Q. Now, after the name Pearl L. Trenary was written by the defendant Pagliochini as an endorsement on the back of that check, what did you do, if anything? A. I went into the bank and they didn't cash it, so he, Mr. Pagliochini, said he knew where he could get it cashed: At the City Bank at 8th and Pennsylvania Avenue, Southeast.

THE COURT: Just a moment. You two and your niece were sitting
26 in his car when he wrote that name on the check and at that time you were near a bank?

THE WITNESS: Yes, just before we got to a bank.

THE COURT: What bank did you go into when you say you tried to get it cashed?

THE WITNESS: I think it is the National Bank at 8th and H, Northeast.

THE COURT: And they wouldn't cash it?

THE WITNESS: Yes.

THE COURT: Then what happened?

THE WITNESS: He said, "Let's go to City Bank." He said he knew someone who had an account there. So then he asked my niece to sign the name of John Moore on the check and she signed it. Then --

THE COURT: Where were you when she signed "John Moore" on the check?

THE WITNESS: We were near the City Bank at 8th and Pennsylvania.

THE COURT: Still in his car?

THE WITNESS: Yes, sir; we were still in his car.

BY MR. CAPUTY:

Q. Did you go into the City Bank? A. Yes.

Q. How many times did you go into the City Bank? A. Well, I went
27 once and they said unless the signature of John Moore was on there -- if I had the signature they would cash it, so I went back to the car and he asked my niece to sign the name John Moore and so then he went back into the bank with me.

Q. On the second time, he went in the bank with you? A. Yes. Then

they said the signatures didn't match and they didn't cash it then.

Q. From the City Bank when you didn't get that check cashed, where did you go? A. I went into a liquor store down near there.

Q. And about what time was this? A. I don't know exactly. It must have been about three o'clock in the afternoon.

Q. Was your niece, Laverne Mims, with you, too? A. Yes, we were all together all the time.

Q. Did you go into the liquor store? A. Yes, sir.

Q. Did you go by yourself? A. Yes, sir.

Q. Now, at the time you went into the liquor store -- strike that.

When you left the City Bank when they wouldn't cash the check after you had gone there the second time, what did you do with the check after you left City Bank the second time? A. I gave it back to Mr. Pagliochini and
28 then I went home and he came back.

Q. After leaving the City Bank the second time, where did you go? A. I went to this clothing store. The person at the liquor store said he knew the man over there and to tell him --

THE COURT: Knew what man over where?

THE WITNESS: At the clothing store, Gritz Clothing Store, across the street from the liquor store, and to tell him he sent me over and he would cash it for me. Mr. Gritz said he could cash it the next day.

THE COURT: You went over there?

THE WITNESS: Yes.

THE COURT: The owner, Mr. Gritz, said he would cash it the next day?

THE WITNESS: Yes.

THE COURT: Then what happened?

THE WITNESS: So I gave it back to Mr. Pagliochini and the next day he came over to my apartment again about ten o'clock in the morning and woke me up -- I was asleep -- and he asked me to come and go with him back down there to the Gritz place.

BY MR. CAPUTY:

29 Q. Now, on the fifth was Paul Rollins with you at any time when you tried to cash this check? A. In the evening of that - the first day on the fifth, Paul, Mr. Rollins, came over to my apartment.

Q. Who came? A. Mr. Rollins.

THE COURT: Who?

MR. CAPUTY: Rollins.

THE WITNESS: He came over about six o'clock, six-thirty, and Joe was there and Joe asked him to cash the check and Joe asked him if he could get his brother to cash the check and Paul said he didn't want to be bothered with it.

MR. CAPUTY: Don't tell us what was said.

THE COURT: Pagliochini was there. Go ahead.

THE WITNESS: Paul said he didn't want to be bothered with it. He didn't think his brother would cash the check.

BY MR. CAPUTY:

Q. Did you leave the apartment then on the fifth when Pagliochini asked Rollins if he could cash the check? A. Yes.

Q. Who left with you? A. The four of us, my niece, Mr. Pagliochini and Mr. Rollins.

30 Q. Where did you go after you left your apartment on the evening of the fifth when Paul Rollins was with you? A. We went back down there to the liquor store and Joe told me to go in and buy -- tell the man -- I forget how much, what he said to buy. He said to give the man $25 if he would cash the check and to buy some beverages, and I went in there.

THE COURT: What?

THE WITNESS: He said to go in the liquor store and buy something, I forget exactly what he said, and to give the man $25 if he would cash it.

THE COURT: Pagliochini told you that?

THE WITNESS: Yes. The four of us were together then.

THE COURT: Did you go to the liquor store -- did you go into the liquor store to make this deal, if you could make it?

THE WITNESS: Yes, sir.

THE COURT: Tell us what happened when you got in there?

THE WITNESS: The person just said he couldn't cash that sized (sic) check.

THE COURT: You had already tried there earlier?

THE WITNESS: Yes.

31 THE COURT: You were back in there a second time later the same day; is that right?

THE WITNESS: Yes.

THE COURT: And he told you again he couldn't cash it?

THE WITNESS: He said first in the evening he didn't have that much money so I went down later.

THE COURT: What happened then after you left the liquor store?

THE WITNESS: I went home. I didn't go any place else that evening.

BY MR. CAPUTY:

Q. After leaving the liquor store the second time when Paul Rollins went with you, can you tell us whether you went then to Gritz Clothing Store again? A. No, I didn't go back there that evening.

Q. So you went back home? A. Yes.

Q. What happened when you got back home? A. Well, nothing. I don't recall.

Q. What happened to the check? A. I gave it back to Joe.

Q. Did there come a time that Pagliochini left your place on March 5th? Did he leave your place? A. Yes.

32 Q. Did you see him again? A. Not that evening. I saw him the next morning.

Q. What time? A. He came back at about ten o'clock.

Q. That is March 6th? A. That is right.

Q. On that day when he came back, March 5th, can you tell us whether Pagliochini had the check on him, Government's Exhibit 1 for identification? A. When he came up he didn't have it with him, but he had it in

the glove compartment of his car.

Q. Did you see it on March 6, 1958? A. Yes, sir.

Q. Where? A. Well, he asked me to go back down there because Mr. Gritz said he would cash it that day; and I went back in there, but Mr. Gritz just said he couldn't cash it because -- just said he couldn't cash it.

Q. Now, later on can you tell us whether you placed any endorsement on the check?

MR. SURES: Your Honor, I have to object at this time to these rather clever leading questions. I think he shouldn't lead.

THE COURT: I overrule the objection.

BY MR. CAPUTY:

33 Q. Can you tell us whether you placed any endorsement on the back of that check, Government's Exhibit 1 for identification? A. Yes, after I went to the clothing store that morning and I went home and went back to sleep, so Joe and my niece came upstairs and told me that my landlord said he would cash the check only if my signature was on it.

Q. Did you place your signature on it? A. Yes, sir.

MR. CAPUTY: Indulge me one moment, if Your Honor please.

BY MR. CAPUTY:

Q. Did there come a time then -- can you tell us whether that check was cashed at the beauty parlor? A. My landlord gave them $25. And he said --

THE COURT: No, no. She wasn't there, was she?

THE WITNESS: I wasn't in the beauty shop; my niece took it down.

THE COURT: No, don't tell us what your niece told you.

THE WITNESS: She took it down.

THE COURT: Your niece, that is, Mrs. Mims and Pagliochini came to your apartment later on the morning of the 6th. You had already been to Gritz, went back home and went to bed; then they came and said they could cash it if you signed your name on it?

THE WITNESS: Yes.

34 THE COURT: And you did?

THE WITNESS: Yes.

THE COURT: And you gave it to whom while you were in the apartment?

THE WITNESS: I handed it to my niece. I think Joe stayed up in the apartment and she took it down.

THE COURT: She left the apartment?

THE WITNESS: That is right.

BY MR. CAPUTY:

Q. Did she come back to the apartment? A. Yes, she did and with $25.

Q. Did there come a time when the police came to your place? A. Yes. The police came up about an hour after.

Q. After the police came to your place, can you tell us whether you saw the check again, Government's Exhibit No. 1 for identification? A. Yes. They asked me if I knew anything about a check. I said yes I had seen a check.

Q. After the police left, did you see that check again? A. Yes. He told me that the check was a stolen check.

35 MR. SURES: Your Honor, I object.

BY MR. CAPUTY:

Q. My question is: the police were there? A. Yes.

Q. Was Mrs. Mims there when the police were there? A. Yes, sir.

Q. Did the police leave? A. Yes, he went out for something.

Q. After the police left, did you see that check again? A. Yes. I sent her after it downstairs.

Q. You sent who downstairs? A. My niece.

Q. Did she come back with that check? A. Yes, she did.

Q. That same check? A. Yes.

Q. Now, all these places that you went to with Pagliochini were in the District of Columbia? A. Yes.

MR. CAPUTY: That is all I have, Your Honor.

* * * * * * * * * *

THE COURT: Before you do, let me ask this -- I wasn't clear about

one phase of the testimony.

36 I want to know particularly, when you went back to 8th and H and tried unsuccessfully to cash the check, and then you went to City Bank, that was at 8th and D; was it?

THE WITNESS: Yes.

THE COURT: And you went in there to try to get it cashed?

THE WITNESS: Yes.

THE COURT: Did you go in by yourself?

THE WITNESS: Yes.

THE COURT: Did you go in by yourself?

THE WITNESS: Yes.

THE COURT: The first time you went in by yourself?

THE WITNESS: Yes.

THE COURT: Tell us what happened when you were in there.

THE WITNESS: There was only one name on it then.

THE COURT: Pearl Trenary, that was the only name on it then?

THE WITNESS: Yes, sir.

THE COURT: What happened at City Bank, at 8th and D, the first time?

THE WITNESS: Well, they said they couldn't cash it because the signature wasn't on it. They said anybody who had an account there, could cash it.

THE COURT: And you left the bank then?

THE WITNESS: Yes, sir.

37 THE COURT: And went back to the automobile?

THE WITNESS: That is right.

THE COURT: What happened when you got to the automobile?

THE WITNESS: Mr. Pagliochini asked my niece if she would put "John Moore" on the check.

THE COURT: He told her the name to put on the check?

THE WITNESS: Yes.

THE COURT: And she did?

THE WITNESS: That is right.

THE COURT: What happened then after your niece, Laverne Mims, wrote the name "John Moore" on the check?

THE WITNESS: Well, the two of us, Joe and I, went back into the bank.

THE COURT: He went in the bank with you the second time.

THE WITNESS: That is right.

THE COURT: He was not in the bank with you the first time?

THE WITNESS: No.

THE COURT: The second time when the name "John Moore" was on the check, he went in the bank with you?

THE WITNESS: Yes.

THE COURT: Did you go to the same teller?

38 THE WITNESS: Yes.

THE COURT: What happened that time?

THE WITNESS: She was going to cash it; the other man in there, he matched the signatures and he said they didn't match. When he checked John Moore's signature there, he said they didn't match. I said -- that was all they said. They just wouldn't cash it.

THE COURT: Then you and Pagliochini left the bank?

THE WITNESS: Yes.

THE COURT: Did you ever go back to that same bank again?

THE WITNESS: No, no more.

THE COURT: All right. I think that clears up what I had.

(Counsel perusing document.)

THE COURT: Have you got another page to read?

MR. CAPUTY: I can give it to him now.

THE COURT: Well, don't give it to him now; he has got enough to read.

At noon time you can read that one. Don't hold me up this afternoon with the second one.

MR. CAPUTY: If Your Honor please, might I ask one question I overlooked?

THE COURT: No, not until he has finished reading.

39 (Short pause in the proceedings:)

BY MR. CAPUTY:

Q. On March 5, 1958, Mrs. Davis, at the time the police came in the apartment, was Pagliochini there in the apartment? A. He was in the apartment but, when the police came in, he -- he left while the police were talking to me.

Q. Where was he when the police came in? A. I was in bed sleeping when the police came in; he was in the apartment or in the living room or some place in the apartment.

MR. CAPUTY: That is all.

THE COURT: I take it that on that occasion they didn't talk to him?

THE WITNESS: No, they didn't.

THE COURT: When they talked to you was he in sight?

THE WITNESS: No, not when they were talking to me. He left as soon as he found out there was the police.

CROSS EXAMINATION

BY MR. SURES:

Q. Mrs. Davis, did I understand you to say Mr. Pagliochini slept over at your apartment the night of the 5th? A. No, he didn't.

40 Q. Did he sleep there over the night of the 4th? A. No.

Q. Are you married? A. Yes, I am.

Q. Are you living with your husband? A. No.

Q. For how long a time have you been separated? A. About a year.

Q. Where is your husband now? A. I don't know.

Q. Do you have any children? A. No, I don't.

Q. How long have you been married? A. 14 years.

Q. Did you tell the police that Mrs. Mims was your daughter? A. Yes.

Q. When the police first came to your apartment, did you tell them right away you had the check? A. Yes, I did. As soon as they asked me,

I said I knew where it was.

Q. You told them the truth just as soon as they started asking you questions? A. That is right.

Q. Just as you are telling the truth now, you told them then?

41 MR. CAPUTY: Your Honor, I object.

THE COURT: That is proper.

BY MR. SURES:

Q. How long have you been in the District of Columbia? A. About 18 years.

Q. Do you work? A. Not at the present time.

Q. Did you ever work? A. Yes.

Q. When was the last time you worked? A. Well, I don't know exactly.

THE COURT: Will you try and tell us approximately?

THE WITNESS: It has been about two years ago.

BY MR. SURES:

Q. Where was it that you worked? A. The last time I worked at all it was in Georgia; that is my home.

Q. In Georgia? A. Yes.

Q. So you didn't work two years ago. A. I did down in Georgia. I was visiting down there for the summer.

Q. For the summer? A. Yes.

42 Q. Is that where you are from? A. Yes.

Q. Have you been married more than once? A. Yes, I have.

Q. May I ask how old you are? A. 38.

Q. Who was your first husband?

MR. CAPUTY: I object.

THE COURT: I sustain the objection. Don't answer the question.

BY MR. SURES:

Q. Did you have any children by either marriage? A. No.

Q. What is the true relationship between you and Mrs. Mims? A. She is my niece.

Q. Daughter of whom? A. My sister.

Q. What is your sister's name?

THE COURT: I don't see that that is material. If you tell me why it is material, I may let her answer.

MR. SURES: I want the jury to know the whole picture of this alleged family relationship so they can see how closely knit Mims and Davis are.

THE COURT: You want to show the girl isn't her niece?

43 MR. SURES: I don't know whether the girl is her niece. Mrs. Davis has been alleging up to now she is her daughter.

THE COURT: Now, she says the girl is her niece. What difference does it make what her sister's name is? That is what I want to know.

Do you object to telling us the name of Mrs. Mim's mother?

THE WITNESS: No. Her name is Bennett.

BY MR. SURES:

Q. You have told us you are not working now. Tell us by what means you support yourself? A. My husband sends me a check every month.

Q. But you don't know where your husband is? A. No. He sends it to my landlord; I never see them.

Q. You never see the checks? A. Huh?

Q. You never get the mail?

THE COURT: She said she gets it.

BY MR. SURES:

Q. Does the envelope show where it comes from? A. No, he sends it to my landlord I told you.

Q. And you never see the envelope? A. No.

44 Q. How often does he send you a check; every month? A. I don't think that has anything to do with this.

THE COURT: I don't think it is material, Mr. Sures.

MR. SURES: I don't know what the background is. If she is some thing other than she represents herself to be, maybe she has another means of support.

THE COURT: The question is how far I should let you go.

MR. SURES: I should like the jury to know how she supports herself.

THE COURT: You want to know, now, how much her husband sends her per month?

MR. SURES: Yes, Your Honor.

THE COURT: You can answer that. How much?

THE WITNESS: About $150.

BY MR. SURES:

Q. And you live off that money entirely? A. Yes.

Q. How much is your rent? A. $80 a month.

Q. $80? A. $80 a month.

Q. $80? A. That is right.

45 Q. Now, it is my understanding you told this jury and the Court and all of us that it was Joseph Pagliochini who wanted to cash the check, it was his idea? A. Well, it was his idea, I guess.

Q. You did say that, didn't you? A. Yes.

Q. Did you expect to get any benefit out of any proceeds of the check if they were obtained? A. No.

Q. None at all? A. No.

Q. On March 5, Mrs. Davis, were you deeply in debt? A. I wasn't; my husband was.

Q. Your husband was deeply in debt on March 5th? A. Yes.

Q. You have not seen your husband for a year, is that right? A. I have seen him. I didn't say I hadn't seen him for a year. I said we have been separated over a year.

Q. You don't know where he lives? A. He is in the District of Columbia some place.

Q. But he is in the District of Columbia? A. Yes.

Q. Did you intend to get some money from that check to pay rent with?

46 A. No.

Q. You were doing this all as a favor for Joseph Pagliochini, is that

right? A. Yes.

Q. Have you ever bought anything from a finance company? A. No, I didn't buy anything from them; my husband did.

Q. Did you sign for whatever he bought?

MR. CAPUTY: I object to that. I think we are going far afield.

MR. SURES: I will make this material if Your Honor will let me proceed.

THE COURT: The question is did you sign either with your husband or for your husband for purchases from a finance company?

THE WITNESS: I signed one with him.

BY MR. SURES:

Q. So you yourself owed the finance company some money, didn't you? A. Well, I figured he owed it; I didn't owe it.

Q. Didn't you make a payment to the finance company to repay that debt? A. No, he made all the payments.

47 Q. The finance company came around to collect from you, didn't they? A. They came.

Q. Isn't it a fact you tried to pay them with this check? A. I told them if they wanted to cash the check, I would pay them.

THE COURT: When was that, do you know?

THE WITNESS: That was -- I guess it was the fifth; maybe it was the sixth, one or the other.

BY MR. SURES:

Q. Now, let me ask you this: Did you make any suggestions as to where you should go to cash the check? A. Yes.

Q. In other words, some of the places, either the bank or the Gritz store or the liquor store, you suggested yourself to go there and cash the check? A. I suggested the whiskey store.

THE COURT: The one you mentioned to us earlier?

THE WITNESS: Yes.

BY MR. SURES:

Q. You knew the owner there? A. Yes, I did.

Q. Did you know the people at Gritz? A. I know them, not too well.

48 Q. Where were you sitting in the car when you were riding to the bank? A. Where was I sitting?

THE COURT: Which bank are you talking about?

MR. SURES: 8th and H.

THE WITNESS: The three of us were sitting in the front seat.

BY MR. SURES:

Q. What part of the front seat were you sitting in? A. On the outside.

Q. Where was Mr. Pagliochini? A. Driving the car.

Q. And Mrs. Mims was in the middle? A. Yes.

Q. You rent this apartment over the beauty salon on Pennsylvania Avenue, is that right? A. That is right.

Q. And you walk up one long flight of stairs to get there, is that right? A. Yes.

Q. And the entrance to the apartment is on the street, isn't it? A. Yes.

Q. Right next door is the entrance to the beauty salon? A. It is up

49 above the beauty salon.

Q. Yes, but the entrance to the beauty salon and your apartment are right next to each other, isn't that right? A. Yes.

Q. Who lives with you in that apartment? A. My niece stays with me part of the time.

Q. When did she come to Washington? A. In January some time. Some time in January.

Q. Had she ever stayed with you before that?

THE COURT: Before what?

MR. SURES: Before January 5.

THE WITNESS: No.

BY MR. SURES:

Q. When was the last time you had seen her before January, 1958? A. A couple of years, I guess -- two years.

Q. Did you live with anybody in that apartment before January, 1958? A. No one but my husband.

Q. When did you move there? A. I moved there in -- I have been there for nearly three years.

Q. Your husband left about a year ago. That would be about July of 1957, is that right? A. I guess so.

50 Q. Don't you know? A. I don't know exactly.

Q. You still maintain it was a year ago?

THE COURT: She said about a year. I am afraid you are being much too meticulous and detailed.

MR. SURES: I have to be because there are too many discrepancies.

THE COURT: Please let's don't argue the case to the jury. I have ruled.

BY MR. SURES:

Q. Assuming your husband left July, 1957, you lived alone between then and January, 1958; is that right? A. Yes.

Q. And except for Mrs. Mims you live alone now? A. I certainly do.

Q. When you were in the automobile with Mr. Pagliochini, you say Mrs. Mims was in the middle and you were on the right side, didn't you ask Mrs. Mims to sign the name "John Moore" on the check? A. I didn't ask Mrs. Mims to sign it.

Q. You didn't urge her to sign it? A. No, I didn't.

Q. Did you tell her not to sign it? A. I said I would rather she didn't sign it.

Q. That is what you said? A. Yes.

51 Q. But she signed it anyway? A. Yes. Joe repeatedly asked her to sign it. She was very fond of him and she signed it.

Q. How long had she known Joseph Pagliochini? A. Not too long; not more than a couple months, I guess.

Q. A couple months? A. I don't think it was that long.

Q. It was less than a month; wasn't it? A. I don't know exactly.

* * * * * * * * * *

52 IRENE L. DAVIS

the witness on the stand at the time of recess, resumed the stand and testified further as follows:

CROSS EXAMINATION
(resumed)

BY MR. SURES:

Q. Mrs. Davis, do you live with Paul Rollins? A. No, I don't.

Q. Do you know Paul Rollins? A. Yes, very well.

Q. How long have you known him? A. About ten years.

Q. Ten years. Do you know his family? A. I have met them, yes.

Q. Did you ask Mr. Rollins to cash the check in question? A. No, I didn't ask him; Mr. Pagliochini asked him.

53 Q. You say Mr. Pagliochini asked him to cash the check, you didn't? A. No, I didn't.

Q. Let me ask you this: How well does Mr. Pagliochini know Mr. Rollins?

THE COURT: To your knowledge.

THE WITNESS: I think they have known each other for some years, I couldn't say exactly.

BY MR. SURES:

Q. They have known each other for some years? A. I think so, I am not sure.

Q. You were indicted in this case along with Mrs. Mims and Mr. Pagliochini, weren't you? A. Yes.

Q. You were accused of the same acts that he is now accused of, isn't that so? A. I guess I was.

Q. Yes. Did you make arrangements with Mr. Caputy to agree to testify if he would drop the case against you? A. With whom?

THE COURT: This gentleman, Mr. Caputy.

THE WITNESS: I don't remember. I talked with so many people, I can't remember.

BY MR. SURES:

54 Q. Did you agree to testify if the Government wouldn't prosecute you in this case? A. I did according to my attorney.

Q. Did you go over your testimony with Mr. Caputy?

MR. CAPUTY: With me. Did you talk about it with me?

MR. SURES: I will ask the questions, Mr. Caputy, please.

THE WITNESS: I don't remember whether I talked with him or not.

BY MR. SURES:

Q. Is it true Mr. Rollins sleeps at your apartment? A. He has been there on weekends.

Q. I am sorry, I didn't understand you. A. He has been there on weekends.

Q. He sleeps over on weekends? A. Sometimes.

Q. Has he ever lived there for a long period of time, say a week? A. Yes.

Q. A month? A. Well, he stayed there when I was down on my vacations in Georgia last summe r or last winter.

Q. He stayed at your present apartment; that is where he stayed?

55 Q. Yes.

Q. And when you came back you continued to live with him, didn't you? A. No, he went to his brother's after that.

Q. May I ask you if you are addicted to alcohol? A. I guess I am.

Q. On the morning that you say Mr. Pagliochini brought this check to your apartment, was anybody else in the apartment? A. My niece.

Q. Nobody else? A. No one else.

Q. There was not another woman there? A. I don't think so.

Q. Was there a man who had passed out from too much drinking on the floor? A. No.

Q. Did you suggest to Mrs. Mims that she go and cash the check with Mr. Kirkpatrick? A. No, I said I didn't want to bother Mr. Kirkpatrick. I didn't want to bother him with it.

Q. It was not at your suggestion she went down to see Mr. Kirkpatrick? A. No.

THE COURT: Do you know whose idea it was?

56 THE WITNESS: I don't know whose idea it was.

BY MR. SURES:

Q. And that is the truth? A. I said I did not want to bother Mr. Kirkpatrick at all.

Q. Did Mr. Pagliochini tell you he found that check in his mailbox? A. Yes, he said he found it in the mailbox.

Q. In his mailbox? A. Yes.

Q. Did you know Mr. Pagliochini was married? A. I didn't know for sure; I was told he was and then that he wasn't, so I didn't know. When I found out he was married, I forbid my niece to see him after I was told for sure that he was married.

Q. When were you told for sure he was married? A. Shortly before all this happened about the check.

Q. Did your niece continue to see him? A. Yes.

Q. You knew that? A. I knew but I couldn't do anything about it.

Q. In fact, she entertained him in your apartment? A. Yes.

Q. Quite frequently? A. Yes.

57 Q. Were you aware of the fact Mr. Pagliochini's wife left him on account of Mrs. Mims? A. No, he said he was separated from his wife.

Q. He told you that? A. I asked him not to come there any more and he did anyhow.

Q. He told you he was separated from his wife? A. In the beginning I didn't even know he was married.

Q. When did he tell you he was separated from his wife? A. After I was told. My brother-in-law told me he was married and that is the first time I knew he was really married.

Q. And that was shortly before this check incident occurred? A. Yes.

Q. When were you told he was separated? A. He told me he was separated when I asked my niece not to see him any more.

Q. Then did you continue to advise your niece not to see him any more even though you knew he was separated? A. Yes, I asked her not to.

Q. Did you know that Mr. Pagliochini went back to live with his wife? A. No.

58 Q. You never knew that? A. No.

Q. Did you know that he and Mrs. Mims broke up their relationship? A. Yes, I knew.

Q. Were you angry about that? A. Yes, I was -- no, not about them b reaking up. After I was arrested, when I came back home, I definitely asked her not to see him. And then she went out one evening supposedly with another person and he brought her home at three o'clock in the morning, so I went downstairs and got her out of the car and he forbid her to get out of the car.

Q. How old is Mrs. Mims? A. 21.

Q. She has been married? A. Yes, she was married.

Q. She was not really living with you at that time? A. Yes, she was.

Q. She wasn't visiting temporarily? A. She was living with me at the time he had taken her away.

Q. She came here in January, 1958. Did she come to stay with you at that time? A. No.

Q. She stayed with you all the time, didn't she? A. No.

59 Q. She stayed someplace else? A. Not until he moved her.

THE COURT: Who?

THE WITNESS: Mr. Pagliochini had taken her away. She was due to come to a hearing in court. He had taken her to a room some place and locked the door and so she couldn't come to --

MR. SURES: Objection.

THE COURT: Do you know that of your own knowledge?

THE WITNESS: No. That is what she told me.

MR. SURES: I move that be stricken, Your Honor. That is hearsay.

THE COURT: Your own questions brought it out.

BY MR. SURES:

Q. Did you sign a statement for the police after this check incident occurred? A. Yes.

Q. And in that statement did you say you had one daughter, Laverne Bennett Mims?

MR. CAPUTY: Your Honor --

THE COURT: Let her answer that.

THE WITNESS: I had said that to protect her.

BY MR. SURES:

Q. Did Mr. Pagliochini ask you to cash the check personally? A.

60 No. He asked me if I knew where he could get it cashed.

Q. Will you tell me if this statement is correct? "In other words, he indicated the check belonged and was made out to his sister who had given it to him."

THE COURT: Did you tell the police that?

THE WITNESS: Yes.

THE COURT: That he said it was made out to his sister?

THE WITNESS: Yes. I told the police that. And later in the evening he said it belonged to his wife. That is what he told Mr. Rollins.

BY MR. SURES:

Q. You told the police officer that he said it belonged to his wife? A. I think so.

Q. Will you tell me if this statement is correct?

THE COURT: Also to the police?

MR. SURES: Yes.

BY MR. SURES:

Q. Will you tell me if you said this to the police? "I told Joe I didn't have the money to cash such a large check for him." A. Possibly I said that.

61 Q. Will you tell me whether you made this statement to the police --

MR. CAPUTY: If Your Honor please, it is my understanding a statement is used for impeachment purposes; not to pick out anything and ask if she said it. If he would like the entire statement I have have no objection.

THE COURT: Have you got a copy of that statement? If something is read to her out of context and needs something more, let me know.

MR. CAPUTY: I have no objection to reading all of it.

MR. SURES: I don't want to read the whole statement.

THE COURT: I have ruled. Where are you about to read.

MR. SURES: The second page, the next to last paragraph.

BY MR. SURES:

Q. Did you make this statement, which I am going to read to the police? "And Joe had the check in his possession all the time except when I had it to go into the banks and stores to try to cash it."

THE COURT: That is entirely her testimony. That doesn't impeach her.

BY MR. SURES:

62 Q. Mrs. Davis, let me ask you this: Did you make this statement to the police? "Sometime during the afternoon while we were still in the apartment, a man from the American Finance Company came to see me to collect some money I owed his company on a loan I had made."

Did you tell the police that? A. I guess I did, yes.

Q. And did you tell them further, "While this person from the Finance Company was talking to me, I asked him if he would cash the check for me and take out the money I owed from the check." A. Yes, I did.

Q. Let me ask you, do you know John Moore? A. Yes, I know him.

Q. Let me ask you just one more question: Did you discuss this case with Mr. Rollins during the luncheon recess? A. No, I haven't.

Q. Did you have lunch with him? A. Yes.

Q. Did you discuss your testimony with him? A. Yes.

Q. Did you tell him what you had testified to? A. No, I didn't tell him exactly everything.

Q. Did he tell you what he was going to testify to? A. He has already
63 made a statement.

Q. Did he tell you what he is going to testify?

THE COURT: Today he means.

THE WITNESS: No.

* * * * * * * * *

64 REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Mrs. Davis, take a good look at me. Have you ever been in my presence before or talked to me at any time?

THE COURT: Before today?

BY MR. CAPUTY:

Q. Before today? A. Not that I remember. As I said, I have talked with so many people, I can't remember all of them.

Q. Have you ever been in this building here to talk to me?

MR. SURES: She has already answered the question.

MR. CAPUTY: I am particularizing it now -- in this building.

BY MR. CAPUTY:

Q. Have you ever talked to me in this building about this case at any time? A. No, I don't think I have.

MR. SURES: What was the answer?

THE COURT: No.

THE WITNESS: I don't think I have.

MR. CAPUTY: That is all.

* * * * * * * * *

65 LAVERNE C. MIMS

* * * * * * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your name? A. Laverne Carolyn Mims.

Q. Where do you live? A. 1418 Pennsylvania Avenue, Southeast.

Q. Are you related to --

MR. SURES: I am having difficulty hearing.

THE COURT: You will have to speak up a little louder.

BY MR. CAPUTY:

Q. Did you say Pennsylvania Avenue? A. Yes, I did.

Q. Are you related to Irene Davis? A. Yes.

Q. What is the relationship? A. She is my aunt.

Q. Do you know a person by the name of Pagliochini? A. Yes, I do.

66 Q. Do you see him here in the courtroom? A. Yes, he is.

Q. Will you point him out? A. (Indicating.)

Q. Which one? A. The one in the middle.

THE COURT: That is the defendant.

BY MR. CAPUTY:

Q. Directing your attention to March 5, 1958, were you at 1418 Pennsylvania Avenue, Southeast, in Washington here? A. Yes, I was.

Q. Was Irene Davis there? A. Yes, she was.

Q. And on this occasion did you have occasion to see Pagliochini? A. Yes, I did.

Q. Was he at 1418 Pennsylvania Avenue, Southeast? A. Yes, he was.

Q. And on this particular occasion was there any conversation concerning a check? A. Yes, sir, there was.

Q. I show you what has been marked as Government's Exhibit No. 1 for identification. I ask you to look at that check and tell us whether you have seen it before today? A. Yes, I did.

67 Q. When was it you first saw it? A. When Joe Pagliochini brought it to our apartment.

Q. Did he have it in his possession? A. Yes, he did.

Q. Will you tell the court and jury what, if anything, Joe Pagliochini said to you about that check? A. He said he had found it in his mailbox.

Q. Did he say anything else? A. He said he was going to try to get it cashed.

Q. I beg your pardon? A. He said he was going to try to get it cashed.

Q. Did you go anywhere from that apartment? A. With him?

Q. Yes, on that day, March 5. A. Yes, I did.

Q. Was Irene Davis with you? A. Yes, she was.

Q. Where did you go? A. We went to -- the first place we went was to the bank; it was on 8th and H, Northeast.

Q. How did you travel to that bank? A. In his car.

Q. Did Irene Davis go with you, too? A. Yes, she was.

68 Q. Would you look at Government's Exhibit No. 1 for identification, the back of that check. Do you see any endorsements on that check? A. Yes, I do.

Q. Can you tell us whether Joseph Pagliochini placed any endorsements on that check? A. Yes.

Q. Which one? A. Pearl Trenary.

Q. Did you see him write it? A. Yes.

Q. Was Irene Davis present at the time he wrote it? A. Yes.

Q. Where were you and Irene Davis when Joe Pagliochini wrote Pearl Trenary on the check? A. We were in his car. He pulled up to the right and wrote Pearl Trenary on the check.

Q. After he wrote the name "Pearl Trenary," will you tell the Court and jury what, if anything, did he say concerning that check as to what to do with it? A. He asked her could she get it cashed, and she said she thought she could get it cashed under the name of Carl Sinclair or B. Sinclair.

Q. Where did you go? A. 8th and H, Northeast.

69 Q. What bank was that? A. I don't know the name.

Q. Who went in the bank? A. Mrs. Davis.

Q. Did she return to the car? A. Yes.

Q. Did she have that check with her then? A. Yes.

Q. What did she do with the check after she returned to the car from 8th and H Street Bank? A. I am not sure whether she kept it or -- she kept it. He then said he thought he could get it cashed at the City Bank.

Q. Did you go to the City Bank? A. Yes.

Q. Did anyone go inside the bank? A. Mrs. Davis.

Q. Did she go by herself? A. Yes.

Q. At the time she went into the City Bank, was there any other endorsement on that check other than Pearl Trenary? A. Not at that time.

Q. Did there come a time when Irene Davis came out of the City Bank?

70 A. Yes.

Q. Did she come back to the car? A. Yes.

Q. What, if anything, did she do with the check when she came back to the car? A. She still kept it.

Q. Was anything said by Irene Davis when she returned from the City Bank concerning that check in Pagliochini's presence? A. She said they would not cash it unless she had some identification of John Moore with his signature.

Q. Did Pagliochini reply to that? Did he say anything? A. We then went to 8th Street.

MR. SURES: The answer is not responsive.

BY MR. CAPUTY:

Q. Let me put it this way: Can you tell us whether a second trip was made into the City Bank? A. Yes, there was.

Q. Prior to going into the City Bank the second time, can you tell us then whether there was another endorsement on that check? A. Yes, sir, there was.

Q. What endorsement was that? A. John Moore.

71 Q. Who placed that endorsement on that check? A. I placed that endorsement.

Q. Will you tell us the circumstances surrounding your placing the endorsement on that check? A. Mr. Pagliochini said he couldn't place that endorsement on that check because he had already wrote Pearl Trenary and Mrs. Davis said she wasn't going to do it all by herself.

THE COURT: Did anybody ask you?

THE WITNESS: Yes.

THE COURT: Who did?

THE WITNESS: Mrs. Davis and Mr. Pagliochini.

BY MR. CAPUTY:

Q. After the endorsement of John Moore was placed on the check, who, if anyone, went back into the City Bank? A. Mrs. Davis went back in there.

Q. Did Pagliochini go into the bank the second time? A. Yes, he did.

Q. With Mrs. Davis? A. He went in behind her.

Q. Did there come a time when they left the bank? A. Yes, sir.

Q. Where, if anywhere, did you go? A. They had already gone to Gritz' Clothing Store twice before that.

72 Q. Did you go anywhere else? Was that car driven anywhere else to try to cash that check? A. I am not sure. I think she went to try to cash it at a liquor store on H Street.

Q. Did there come a time later that day when you saw Paul Rollins? A. Yes, sir.

Q. Where was it you saw Paul Rollins? A. At our apartment.

Q. After you saw Paul Rollins at your apartment, can you tell us whether you left that apartment? A. Yes, sir.

Q. Where did you go? A. Gritz Clothing Store.

Q. Was Paul Rollins with you? A. Yes, sir.

Q. Whose car did you ride in? A. Mr. Pagliochini's.

Q. While you were in the apartment before you went to Gritz Clothing Store, can you tell us whether anything was said by Pagliochini to Paul Rollins concerning that check? A. I didn't hear him.

Q. When you got into the car, where did you go? A. To Gritz' Clothing Store.

73 Q. Did anyone go into the store? A. Mr. Pagliochini went there and Mrs. Davis.

Q. Did they return? A. Yes, sir, they did.

Q. And upon their return, who had the check? A. I think Mrs. Davis then had it.

Q. Did there come a time then you returned to the apartment later that evening on March 5? A. Yes, sir, we did.

Q. And was the check in the possession of the people? A. Yes, sir; yes, it was.

MR. SURES: Of whom?

MR. CAPUTY: Of the people, I used all.

BY MR. CAPUTY:

Q. Did there come a time Mr. Pagliochini left 1418 Pennsylvania Avenue, Southeast, on March 5? A. Yes, sir.

Q. At the time he left 1418 Pennsylvania, Southeast, can you tell us whether the check was in his possession? A. He took it and put it in his car, the glove compartment.

Q. Let me ask you this question: Why did you sign the name of John Moore on the check? A. Because Mrs. Davis and Mr. Pagliochini, they just kept nagging and telling me to.

74 Q. Pagliochini, too? A. Yes.

Q. Were you to get any money from that check? A. No, sir, I wasn't.

Q. Now, directing your attention to March 6, 1958, did you see Pagliochini on that day? A. Yes, I did.

Q. Where was it you saw him? A. He was still at the apartment.

Q. At the apartment? A. Yes.

Q. And on March 6, 1958, can you tell us whether Pagliochini had Government's Exhibit No. 1, that check, in his possession? A. He had it, but Mrs. Davis took it and I think she went down to Gritz again to try to get it cashed that day.

Q. Did there come a time later on on March 6, 1958, that you saw Mr. Kirkpatrick, the beauty parlor operator? A. At first Mrs. Davis and I both went down and he wasn't there.

Q. Did you go down again after that? A. Yes, sir.

Q. Did anyone ask you to go down? A. Yes, sir.

75 Q. Who asked you to go down?

THE COURT: Mr. Pagliochini asked her to go down there.

THE WITNESS: He asked me to go. At first Mrs. Davis asked me to go down there to say it was a friendship and that he owed some money. I kept saying I didn't want to go. She went to bed and Mr. Pagliochini asked me to go down there.

THE COURT: What did he say?

THE WITNESS: He said to say it was a friend of Mrs. Davis and she owned him some money and for him to cash it for him.

THE COURT: Did he ask you to try to get it cashed?

THE WITNESS: Yes.

THE COURT: Did you take that check, Government's Exhibit No. 1 for identification, down to Mr. Kirkpatrick after Pagliochini asked you to?

THE WITNESS: Yes.

THE COURT: What endorsements were on it when you took it down there?

THE WITNESS: Only the two at that time.

BY MR. CAPUTY:

Q. Then did you go back to the apartment? A. Yes, I did.

Q. And at the apartment can you tell us whether another endorsement
76 was placed on it? A. Yes, sir, there was.

Q. Who placed the endorsements? A. Mrs. Davis.

Q. Was Pagliochini there at the time? A. Yes.

Q. Did you take it back to Mr. Kirkpatrick? A. Yes, sir, I did.

Q. Did you receive any money for that check? A. I think it was $23.

THE COURT: Well, now, have you still got that check?

THE WITNESS: Yes.

THE COURT: Turn it over on the back.

(The witness complied:)

THE COURT: You notice on that check what looks like the signature of Irene L. Davis?

THE WITNESS: Yes, sir.

THE COURT: Do you know who put it on there?

THE WITNESS: Mrs. Davis.

THE COURT: Who was there when she placed that endorsement on the check?

THE WITNESS: She and I and Joe. Mrs. Davis and Mr. Pagliochini and I were there.

THE COURT: How did she come to sign that check, write her name on
77 that, do you know?

THE WITNESS: I told her Mr. Kirkpatrick said that he couldn't cash the check because he didn't know the other two names, but with her signature on it he would; and she put her signature on it.

THE COURT: When you went back down there with her signature on it, what happened with Mr. Kirkpatrick?

THE WITNESS: He gave me $23.

THE COURT: What was the arrangement you made with him?

THE WITNESS: He was going to take the check to the bank that morning but he was going to give me $23.

THE COURT: $23?

THE WITNESS: I think $22 or $23.

BY MR. CAPUTY:

Q. What did you do with the money Mr. Kirkpatrick gave you after you turned over that check to him? A. I took it back upstairs and put it on the stand by Mrs. Davis's bed.

Q. Was Pagliochini there? A. Yes, he was.

Q. Did there come a time when the police came to the apartment? A. Yes, sir, they did.

Q. At the time the police came to the apartment, was Pagliochini there? A. Yes, sir, he was.

78 Q. Where in the apartment was he? A. He was either in the bathroom or either in the closet.

Q. And did there come a time then the police left your apartment?

A. Yes, sir.

Q. After the police left your apartment, did you go anywhere? A. I went back downstairs and I got the check.

Q. Did you return the money? A. Not at that time, a part of it.

Q. How much? A. I think I had spent $2.

Q. How much did you return to Mr. Kirkpatrick? A. About $20, I think.

Q. Now, at the time that you went down and returned the money and got back the check from Mr. Kirkpatrick, did you say anything about that check to Kirkpatrick? A. I told him it was a bad check; that I had found out about it and that I would like to get it back.

Q. Then after you got that check back, did you go back to the apartment? A. Yes, I did.

79 Q. Was Pagliochini then in the apartment? A. He was there then.

Q. What time did he leave? A. He left right then.

Q. Did there come a time the police came later on? A. Yes, sir.

Q. Was that check turned over to the police? A. I gave it to them.

MR. CAPUTY: That is all I have of this witness.

CROSS EXAMINATION

BY MR. SURES:

Q. Are you married, Mrs. Sims? A. Yes, I am.

Q. Are you from Washington, D. C.? A. No, I am not.

Q. Where are you from? A. Bainbridge, Georgia.

Q. How old are you, Mrs. Mims? A. 21.

Q. You say you are married. When were you married? A. It was in 1957, I think so, the 5th of October.

Q. About a year ago? A. Right.

Q. Do you have a child? A. Yes.

80 Q. Where is the child? A. In Georgia.

Q. Who is taking care of him?

MR. CAPUTY: I object. What difference does it make?

THE COURT: None at all.

MR. SURES: It makes a difference.

THE COURT: Yes? What?

MR. SURES: I just want the jury to know -- she makes a very nice sweet person on the stand -- I just want them to see what she is really like, if she has a child and she is not taking care of the child.

THE COURT: You are not taking care of it?

THE WITNESS: No.

THE COURT: You are not. Who is taking care of your child?

THE WITNESS: A friend of mine.

BY MR. SURES:

Q. You are separated from your husband, is that right? A. Right.

Q. When did you come to Washington? A. January. This past January.

Q. January of this year? A. Right.

81 Q. Where did you go to live when you got here? A. Mrs. Davis's.

Q. You are not divorced at the present time? A. No, I am not.

Q. Did you obtain employment anywhere when you arrived in Washington? A. No, I didn't.

Q. Were you here for a visit or did you intend to stay? A. I intended to stay for a while. I was going back after I got me a job and got settled down.

THE COURT: Will you read that answer, please?

(The answer was read by the reporter.)

BY MR. SURES:

Q. Did you ever obtain a job since January? A. Yes, I did.

Q. Did you obtain a job between January and March 5? A. No, I didn't.

Q. Did you ever live anywhere besides Mrs. Davis's apartment between January and March 5? A. No, I didn't.

Q. When did you meet Joseph Pagliochini? A. I think it was about the last -- somewheres along in February; about the middle of February.

82 Q. Between the time you met him and the time this incident occurred it was a matter of three or four weeks, is that right? A. It was about four weeks.

Q. Did you have an affair with him? A. Yes, I did.

Q. Did you fall in love with him? A. At one time I thought I had.

Q. Did you know he was married? A. I heard that he was married but I also heard that he was separated.

Q. Did you hear his wife left him on account of you? A. No, I didn't.

Q. Do you know his wife? A. I have met her.

Q. Are you angry with Joseph Pagliochini today? A. No, I am not.

Q. No animosity at all? A. No, sir.

Q. Were you ever angry with him? A. No.

Q. Weren't you angry with him when he told you he was going to go back to his wife? A. No.

Q. You didn't care? A. Not particularly. I figured he knew who he
83 wanted to go with, that was for him.

Q. Did you ever have a fight with Mrs. Pagliochini, Joseph's wife? A. Yes, I did.

Q. Are you angry with her? A. No.

Q. Mrs. Davis isn't your mother, is she? A. No.

Q. Yet in the recent past you have constantly referred to her as your mother. A. At one time I felt she was -- thought she was.

Q. At one time you told the police she was, didn't you? A. I thought she was.

THE COURT: You were asked whether you told the police she was your mother.

THE WITNESS: I thought that she was.

THE COURT: When you told the police that, you still thought so.

After this check thing occurred you gave a statement to the police, didn't you?

THE WITNESS: Yes.

THE COURT: In this statement did you tell them that Mrs. Davis was your mother?

84 THE WITNESS: Yes, sir, I did.

THE COURT: My question is, did you at that time think she was your mother?

THE WITNESS: Yes.

THE COURT: When did you learn she was not?

THE WITNESS: It has been about, I would say, about a month ago a little over a month ago, when I went to get my birth certificate.

BY MR. SURES:

Q. Did you ever live with Mrs. Davis in Georgia? A. I stayed at my grandmother's part of the time and she was always there.

Q. You have only been married once? A. Right.

Q. Did you ever visit Joseph Pagliochini's apartment? A. You mean his home?

Q. His apartment on Huron Avenue? A. I have been to his mother's home, if that is what you mean.

Q. You say his mother's home. You mean his mother's apartment? A. Same thing, yes.

Q. Isn't that right? A. Yes.

Q. Weren't you in Mr. Pagliochini's apartment at a time when there

85 was no furniture in there except a bed or a mattress? A. No.

Q. You never were? A. No.

Q. On the night of March 4, which is the day before the check was brought to your mother's apartment -- on March 5, the check was brought to Mrs. Davis's apartment. On March 4, which is a Tuesday, which is the day before March 5, did you have a date with him? A. I am pretty sure he come by the house.

Q. Did you have a -- did you go out? A. We went to his mother's.

Q. Was his mother home? A. Yes, she was.

Q. Was she there the whole time? A. Yes, sir, she was.

Q. This happened on March 4, then? A. I am not sure whether it was 4 or not. I don't know. I do know I have been there and she was there present all the time.

Q. Did you know he had an apartment in that same building? A. He told me he did.

Q. You never went to this apartment? A. I went there and looked at
86 it with him and went straight back upstairs where his mother was.

Q. Was there furniture in there? A. Not then, no.

Q. Was there anything in there? A. I think -- I only went in the first two rooms.

Q. Isn't it a fact you stayed with him all night on March 4 at that apartment house? A. No, it is not.

Q. Did you ever stay all night with him any place? A. Yes, I did.

Q. But not on March 4 at this apartment? A. No.

Q. All right. Then on March 5, you say you were at Mrs. Davis's apartment house? A. Yes, I was.

Q. When Joseph came over to see you? A. Yes.

Q. And that is when you say he had the check? A. He did.

Q. You were not present at the time -- weren't you present at the time he got that check out of the mailbox? A. No, I was not.

Q. Were you present when the police interrogated Mrs. Davis? A. Yes, I was.

87 Q. And did she immediately tell them the truth as you saw it? A. No, not at first.

Q. She told quite a few stories at first, didn't she? A. Right.

Q. She told them at first there was no check, didn't she? A. Right.

THE COURT: Is that what she said at first?

THE WITNESS: I think she said she didn't know anything about any check.

BY MR. SURES:

Q. Then she told them she tore it up? A. I think down by the river or -- I think she said she tore it down by the river.

Q. Then she told them it was a girl friend's check? A. Yes.

Q. And lastly she told them Joseph gave her the check? A. Yes, she did.

Q. Now, there came a time you signed a statement for the police, didn't you? A. Yes, I did.

88 Q. And in that statement, you said that Joseph Pagliochini signed the name "Pearl Trenary" on the check? A. He did.

Q. Did you say you did?

THE COURT: I am assuming she said she didn't sign the name.

THE WITNESS: I didn't.

BY MR. SURES:

Q. Did Mrs. Davis? A. No, she didn't.

THE COURT: You say Joseph signed the name?

THE WITNESS: Yes.

BY MR. SURES:

Q. And Mrs. Davis was present and she saw him do it? A. She was.

Q. Do you remember signing a statement for me? A. Yes, I do.

Q. Do you remember saying in that statement you believed Joe signed the check? A. I said -- you asked me if he signed the check, did I see him sign that check. I said I saw him sign the check. I didn't say that.

Q. You didn't tell me at one time you only believed he signed that check? A. No, I don't think I did.

89 Q. All right. On the morning of March 5, was anyone else in the apartment besides you and Mrs. Davis? A. One of her girl friends was there then, but I don't know her name.

Q. Nobody else? A. And some man, her husband I think it was, with her. They didn't stay long.

Q. Does Mrs. Davis live there with Mr. Rollins? A. Yes, she does.

Q. For how long a time have the two people been living together? A. They have been living together ever since -- I don't know how long they have been living together. Ever since I have been there.

Q. Now, it was on March 6 that you say that you took the check downstairs to Mr. Kirkpatrick? A. Right.

Q. That is Thursday? A. Yes, sir.

Q. And you say that Mrs. Davis asked you to do that? A. Mr. Pagliochini also.

Q. He was there and he asked you to do that? A. Yes, he was there.

90 THE COURT: Read the question. Now listen and understand the question before you answer.

(The pending question was read by the reporter.)

THE COURT: Was he there and did he ask you to do that?

THE WITNESS: Was that the same day the policeman came there that afternoon?

THE COURT: The day you went down with the check to Mr. Kirkpatrick.

THE WITNESS: Yes.

BY MR. SURES:

Q. Whose idea was it first to take that check down to Mr. Kirkpatrick? Wasn't it Mrs. Davis's idea first? A. She said she thought she could get it cashed down at Mr. Kirkpatrick's.

Q. And she also wanted to pay the rent with the check, is that right? A. The only time I remember her saying anything about paying the rent with it, I think, was when this finance -- no, maybe she did say that. I don't recall. She did say when the finance boy came there she would pay him what she owed him if he would cash it.

THE COURT: There is something I didn't hear.

Will you read that last answer?

(The record was read by the reporter.)

91 BY MR. SURES:

Q. So Mrs. Davis brought up the subject of taking the check to Mr. Kirkpatrick and you say you don't remember about paying the rent with it.

When she first suggested it that is when you took the check down? A. No, she and I both went there together first and he was out.

Q. When you went down you say Joseph Pagliochini was in the room? A. He was still upstairs when she and I went down.

Q. Did he tell you not to go down? A. No.

Q. Did he tell you to go down? A. He asked me to go with her down there because she didn't want to go by herself.

Q. And he asked you to go with her. She didn't ask you? A. She wanted me to also.

Q. You are aware of what Mr. Pagliochini is charged with here, aren't you? A. Yes, I am.

Q. In fact, you were charged with the same offenses, isn't that right?

92 A. That is right.

Q. You know you are not going to be prosecuted because you are testifying. You know that, don't you? A. Yes, sir.

Q. Are you aware of the fact when you say Joseph Paliochini asked you to take that check down to Mr. Kirkpatrick that is a very incriminating statement? A. Well, he did.

Q. It wasn't Mrs. Davis alone? A. Mrs. Davis wanted me to; she wanted me to take it down there, too.

Q. Did you tell that to the police when they interrogated you in March? A. No.

Q. You didn't tell that to them then, did you? A. No.

Q. Now, on Thursday, March 6, the police came to the apartment, right? A. Yes, they did.

Q. And you say Joseph Pagliochini was in the apartment at the time they were there? A. Yes, he was.

Q. Now, did you tell them he was there? A. No, I didn't.

Q. Did they look for him? A. Not -- at first, they didn't -- not until

Mrs. Davis told them he was the one who gave her the check.

93 Q. Then did you tell them he was there? A. I didn't; she said he was there.

Q. Then did they look for him? A. They did.

Q. I understand they looked in the bathroom for him? A. That is right.

Q. This detective went in to look for him and pushed back the shower curtain to look for him, is that right? A. Right.

Q. But he didn't see him? A. Right.

Q. You still say he was there? A. Yes, he was there.

Q. Did Mr. Caputy, this gentleman, or any other assistant district attorney, promise you that you would not be prosecuted if you would testify? A. No, they didn't.

Q. Never promised you that? A. No.

Q. Did you know you wouldn't be prosecuted if you testified? A. No, I didn't know that.

94 Q. Didn't know that? A. No.

Q. Well, let me review some of these facts to make sure I have them right. Mrs. Davis took the check into the bank, is that right? A. Right.

Q. That was the first bank? A. Yes.

Q. And she took it into the second bank? A. Yes, she did.

Q. And she took it into the liquor store? A. I don't remember whether she had it with her -- I guess she did -- whether she had it with her then or not.

Q. And you went with her in the liquor store, didn't you? A. No, I didn't.

Q. Now, I am going to refer again to the statement that you signed for the police on March 10th. Let me ask you this: Did you and your mother ever go together in the liquor store to cash the check?

THE COURT: Who?

MR. SURES: Mrs. Davis, I am sorry.

THE WITNESS: No.

BY MR. SURES:

95 Q. I am going to read from the statement that you signed for the police, what you told them on March 10th, and you tell me whether this is correct: "After that my mother" -- I am sorry; it is crossed out. It says, "My mother and I", but "and I" is crossed out.

Well, then, your mother, Mrs. Davis took the check to Gritz Clothing Store? A. Who did?

Q. Mrs. Davis? A. She took it to the clothing store, yes.

Q. Then she took the check to the bank without the name of John Moore on it; is that right? A. Not the second time; the check had the name John Moore on it.

Q. The first time? A. Yes.

Q. The bank refused to cash it? A. Yes.

Q. And then you say she requested you to sign the name and also Mr. Pagliochini requested you to sign the name John Moore on it? A. She said she was not going to do it because she was not going to do it all herself.

Q. Didn't she induce you to sign your name on it? A. Yes.

96 Q. She asked you to, didn't she? A. Yes.

Q. And then she took the check back to the bank and they refused to cash it again with that name on it? A. That is right.

Q. Then she went back to Gritz store? A. That same -- I am not sure whether she went back.

THE COURT: You must speak louder.

BY MR. SURES:

Q. How many times did she go into the liquor store to cash the check? A. I don't know.

THE COURT: Will you read the last question and answer.

(The record was read by the reporter.)

BY MR. SURES:

Q. Then you took the check twice to Mr. Kirkpatrick? A. Yes.

Q. And you got, if I may refresh your recollection, $25? A. Maybe

it was.

Q. And you returned $23 of it to him and got the check back? A. Yes, sir.

Q. Were you present when Mrs. Davis tried to pay the finance company with the check? A. Yes, sir, I was.

97 Q. Was Mr. Pagliochini there? A. He was there then.

Q. He was there then? A. Yes.

Q. He never left the apartment? A. He left that afternoon.

Q. Pardon? A. He left that afternoon.

Q. What was his reason for leaving, did he tell you? A. He was going to his home to see if his income tax check had come in.

Q. He was expecting a check of his own, from the Government, wasn't he? A. Yes, he was.

Q. Now, you mentioned that Detective Bonaccorsy looked for Mr. Pagliochini in the apartment; is that right? A. Yes, he did.

Q. But you didn't say anything about that in the statement to the police, did you, that he was there and the detective didn't see him? A. I thought he was there then.

Q. I know. You didn't tell the police that? A. I am not sure; I think Mrs. Davis said he was there.

98 Q. In your statement --

MR. CAPUTY: May the record show the statement is to the Secret Service, not the police.

BY MR. SURES:

Q. You made a statement to Mr. Meredith, isn't that right, Secret Service Special Agent? A. Yes.

Q. Isn't that so? A. Yes.

Q. And you signed it? A. Yes.

Q. At that time you didn't tell them anything at all about Mr. Pagliochini being in the apartment at the time the detective was there? A. I am not sure, but I thought I put that down there.

Q. Did there come a time, after the police had been there, when you saw Mr. Pagliochini that same day of March 6th? A. After they had been there, did I see him?

Q. Yes. A. Yes, I did.

Q. That evening? A. Yes.

Q. And you told him of all the trouble, didn't you, of all that had occurred that afternoon?

99 THE COURT: Told who?

MR. SURES: Mr. Pagliochini.

BY MR. SURES:

Q. On the evening of March 6, when you saw Mr. Pagliochini, didn't you tell him everything that had transpired between you and the police? A. He was there when the police was there.

Q. He talked with the police? A. No, he didn't, but he was there; he heard it all.

Q. And you saw him that night? A. When he went downstairs and after I had gone down there and got the check and the police came, that is when Joe came out -- whether he was in the bathroom or closet, he grabbed his coat and I said, "Where are you going?" And he went out the back.

Q. You saw him that evening? A. Yes.

Q. And you talked the matter over with him? A. He knew; he had been there.

THE COURT: Did you talk over what had gone on while the police was in the apartment?

THE WITNESS: Yes, I told him that, I told him that he took Mrs. Davis down to the District jail.

100 Q. And you told him you were in trouble, too? A. Yes, I was scared.

Q. Didn't he offer to go to the police and offer to say he signed the name "John Moore" on the check? A. No, he didn't. That he would --

Q. That very evening he came and said he was going to say he signed the name "John Moore" which is the name you signed on the check; isn't that

right? A. I am not sure; he has said that.

Q. Where were you when the police arrested you? A. Arrested me?

Q. Yes. Where were you?

THE COURT: Where were you when you were arrested?

THE WITNESS: I called them up. I heard they wanted me. I called Mr. Kirkpatrick to ask him about Mrs. Davis --

BY MR. SURES:

Q. I say, where were you when the police arrested you? A. Staying at a friend's house.

THE COURT: Tell us what you just started to say. You called Mr. Kirkpatrick, called him up to ask him about Mrs. Davis.

THE WITNESS: And he told me than that Mr. Meredith wanted to talk to me. I called Mr. Meredith up and he asked me to wait there at that place, and I did.

101 THE COURT: Where were you?

THE WITNESS: At that time, at People's Drug Store on 8th.

THE COURT: Did you wait there?

THE WITNESS: Yes.

THE COURT: Did Mr. Meredith come?

THE WITNESS: Yes, he did.

THE COURT: And took you where?

THE WITNESS: I am not sure whether it was this court house or not.

THE COURT: All right.

Was it that building across the street, Police Headquarters, or were you brought to this building?

THE WITNESS: I am not sure.

THE COURT: Go ahead.

MR. SURES: Will Your Honor indulge me just a moment?

THE COURT: Yes.

BY MR. SURES:

Q. You mentioned something about Mr. Sinclair. Did you ever tell

Mr. Meredith about him? A. Yes, I did.

Q. Was it a him or a her? A. It was a Mr. Sinclair and a Mrs. B. Sinclair.

THE COURT: What about them?

102 THE WITNESS: Mrs. Davis said she thought she could get the check cashed under Mr. Carl Sinclair or Mrs. B. Sinclair.

THE COURT: Where did she say she could get it cashed?

THE WITNESS: At the first bank we went to on 8th and H.

THE COURT: What happened to that plan?

THE WITNESS: She said they won't cash it without some identification.

BY MR. SURES:

Q. You told Mr. Meredith about that? A. I am pretty sure about that; I think I did.

Q. Well, I am going to show you the statement that has the signature on it of Laverne Carolyn Mims and ask you if that is yours? A. Yes.

Q. I want you to look it over and tell me if Mr. Sinclair's name is on there.

THE COURT: No. You know I am not going to sit here while she wades through that statement. Do you know whether it is in there?

MR. SURES: I am not going to testify to that.

THE COURT: It isn't in there?

MR. SURES: No, sir.

* * * * * * * * * *

103 REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. Prior to the time that the name of John Moore was placed as the other endorsement on the check and when Mrs. Davis said she wasn't going to do everything, what did Pagliochini say concerning the name of John Moore? A. Pardon?

Q. There came a time, did there not, there was a discussion about another endorsement? A. Correct; yes.

Q. Before the name John Moore was placed on the check by you, you testified there that Mrs. Davis said she wasn't going to do everything; is that right? A. That is right.

Q. Before you placed the name on the check, did Pagliochini say anything to you? A. He said he couldn't forge the name "John Moore" because he had already forged the name "Pearl Trenary."

Q. The second time the check was taken into the City Bank, did Mrs. Davis go in alone or did she go in with somebody?

104 THE COURT: She answered your question on that. Both of them went in, Mr. Pagliochini going in behind Mrs. Davis.

BY MR. CAPUTY:

Q. Did you see Pagliochini on March 8, 1958, Saturday, a couple days after that incident? Did you see him? A. I think I did.

Q. Did you talk to him? A. Yes, I did.

Q. Was there any discussion about this check? Did Pagliochini say anything on March 8, when you saw him on Saturday? A. He was just scared.

Q. Did he say anything about a lawyer or anything?

MR. SURES: I object, Your Honor.

THE COURT: I overrule the objection.

BY MR. CAPUTY:

Q. Do you recall? A. I don't know, but I think he called up his mother and she had gotten him a lawyer and he was going to go and talk to him.

Q. On March 8, was there anything said by Pagliochini concerning taking the check and forging and saying he would take the blame of placing the name "John Moore" on the check? A. I don't know whether it was to the police -- he did say he would take the responsibility of signing the

105 name of John Moore.

Q. Tell us all the conversation. Do you recall everything that was said by Pagliochini when you saw him? Tell us everything that he said.

THE COURT: He means after the police had been there, anytime, a day or two days after that.

BY MR. CAPUTY:

Q. Is your memory exhausted, your recollection exhausted?

THE COURT: As to your talk with him after this thing was all over?

BY MR. CAPUTY:

Q. Is your memory exhausted? A. Yes. I don't remember too much about that.

Q. Would you look at this statement then, your statement.

THE COURT: For the record what are you showing her?

MR. CAPUTY: If Your Honor please, I am showing her the third page of this witness's three page statement to the Secret Service.

MR. SURES: I object.

MR. CAPUTY: Her memory is exhausted and --

* * * * * * * * *

108 (In open Court:)

Q. Now, when you gave your statement to Mr. Meredity, the agent of the Secret Service, among other things what you presumably told him was this: "On Saturday, March 8, 1958, I saw Joe Pagliochini and he told me then that he was going to give himself up and admit taking the check and forging the name of "Pearl L. Trenary" on it. Joe also told me at this time that he was going to say he wrote the name "John Moore" on the check so that I wouldn't be involved." Did he tell you that? A. Yes, he did.

THE COURT: Did he tell you that?

THE WITNESS: Yes.

MR. CAPUTY: That is all.

MR. SURES: That is all.

THE COURT: Who brought up the idea of using the name and having the name "John Moore" on there?

THE WITNESS: That is a very close friend of Joe Pagliochini's.

THE COURT: My question is, who thought up the idea of having John

Moore's name written on this check?

THE WITNESS: He asked me about the name "John Moore."

109 THE COURT: Who did?

THE WITNESS: Joe did.

* * * * * * * * *

110 PAUL RANDOLPH ROLLINS

called as witness by the Government and, after having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your full name? A. Paul Randolph Rollins.

Q. Where do you live? A. Temporary address, 1418 Pennsylvania Avenue, Southeast.

111 Q. Do you know Irene Davis? A. Yes, I do.

Q. Do you know Laverne Mims? A. Yes, I do.

Q. Do you know a person by the name of Pagliochini? A. Yes, I do.

Q. Do you see him in the courtroom? A. Yes.

Q. Will you point him out? A. (Indicating)

Q. Which one?

THE COURT: On your left or right?

THE WITNESS: Second to my right.

BY MR. CAPUTY:

Q. Is he on your left as you are facing? A. Left as I face him.

THE COURT: That is the defendant.

BY MR. CAPUTY:

Q. Directing your attention to March 5, 1958, did you have occasion to see the defendant Pagliochini? A. Yes, I did.

Q. Where was it that you saw him? A. At the apartment at 1418 Pennsylvania Avenue.

112 Q. At about what time?

THE COURT: What date did you say?

MR. CAPUTY: March 5, 1958.

BY MR. CAPUTY:

Q. About what time? A. Approximately six o'clock, after I returned from work.

Q. At the time you saw the defendant Pagliochini, was Laverne there? A. Yes, she was.

Q. Was Irene Davis there? A. Yes, she was.

Q. Now, at the time you saw the defendant Pagliochini on that day, at that apartment, was there any conversation concerning a check? A. Yes, there was, sir.

Q. Would you look at Government's Exhibit No. 1 for identification, which is right before you. I ask you to examine it and tell us whether you have seen that before today? A. Yes, I have, sir.

Q. When was the first time you saw Government's Exhibit No. 1 for identification, that Treasury check? A. It was on or about the 5th or 6th of March of this year.

113 Q. Is that on the occasion you returned home at six o'clock at night? A. Yes.

Q. Who had that check when you saw it on that occasion? A. Joe Pagliochini.

Q. Was anything said by Joseph Pagliochini concerning that check? A. He asked me if I knew where I could get a check cashed.

THE COURT: A check cashed?

THE WITNESS: A check cashed, yes, sir. I said I didn't know at that moment. Then I thought and I said a restaurant at 8th and E might cash it. Then he handed me the check and saw the amount of -- and told me it was in the amount of $572.

BY MR. CAPUTY:

Q. The check he handed you -- was the Government's Exhibit No. 1 for identification, that he handed you? A. Yes, sir.

Q. What, if anything, else was said when he handed you that check? A. I just don't recall anything that pertained to the case that was said at that moment there.

Q. Was any request made of you to cash that check? A. Not right at that moment.

114 Q. Did there come a time, then, that you left the apartment? A. We left that evening.

Q. Who left with you?

THE COURT: He didn't say anyone left with him.

BY MR. CAPUTY:

Q. Did anyone leave with you? A. Joe Pagliochini, Laverne Mims, Irene Davis and myself.

Q. Where did you go? A. We went for a ride to see if we could get the check cashed.

Q. The check or this check cashed?

THE COURT: That one?

THE WITNESS: This check.

THE COURT: Where did you go?

THE WITNESS: Irene Davis had dealt with a liquor store at 8th and G and she went down there because she was known down there, and they tried to get it cashed there. Mrs. Davis went in to try to get it cashed. They couldn't get it cashed. A man referred them to a clothing store, which was across the street in the next block. Mrs. Davis got back in the car and as we were making a U-turn on H Street, heading toward the clothing store, Joe Pagliochini asked me if my brother would cash the check and I said I didn't know.

115 THE COURT: Your brother?

THE WITNESS: Yes, sir, William A. Rollins.

THE COURT: What does he do?

THE WITNESS: He is in the heating contract business.

THE COURT: You said he wouldn't?

THE WITNESS: I didn't know whether he would or not.

BY MR. CAPUTY:

Q. Who asked you that? A. Joe Pagliochini.

Q. Then what happened? A. After we made the U-turn, he said would

my brother cash the check and I said I wouldn't know. So he said, "Would you try?" He said, "I will give you a hundred dollars of the check." Then they went up to the clothing store. Joe Pagliochini and Irene Davis got out and went to the clothing store. The man come to the door and told them he couldn't cash it then.

THE COURT: Did you hear it?

THE WITNESS: No, I wasn't there, sir.

THE COURT: Don't tell us what happened unless you heard or saw it.

116 BY MR. CAPUTY:

Q. Did they come back to the car from the clothing store? A. Yes.

Q. When they came back to the car -- did both of them come back to the car, Irene Davis and Pagliochini? A. Yes, sir.

Q. Did they get in the car? A. They got in the car.

Q. On that occasion, was anything said in the car as to what happened at the clothing store? A. Yes, sir. The man said they couldn't cash it then but to come back at ten o'clock the next morning.

Q. Who said it? A. Mrs. Davis was the one who said it.

Q. Pagliochini was there? A. Pagliochini was in the car, which was his car.

Q. At the time the stop was made at the -- when you left the apartment who had the check in possession? A. Joe Pagliochini.

Q. At the time you got to the liquor store, who had the check in his possession or her possession? A. You mean going into the store?

THE COURT: Just before. Before they got to the liquor store.

117 THE WITNESS: Joe Pagliochini had it and handed it to Mrs. Davis to go into the liquor store.

BY MR. CAPUTY:

Q. Did you return to the apartment that evening? A. Later on, we did, sir.

Q. The four of you? A. The four of us.

Q. Did you see -- Can you tell us whether Pagliochini left that apartment? A. Later on.

Q. That evening after you returned to the apartment -- A. I do believe he stayed there that evening, sir.

Q. After you got to the apartment, who had the check? A. I don't recall that, sir.

MR. CAPUTY: That is all I have.

CROSS EXAMINATION

BY MR. SURES:

Q. Mr. Rollins, how long a time have you known Mr. Pagliochini? A. Close, I would say, the last seven months I have known him; I have seen him before.

Q. You weren't close friends by any means? A. Not very close. Not until he started coming over to the apartment did we get acquainted.

118 Q. He started coming over to the apartment with whom? A. When he came over to the apartment -- started coming over to the apartment we did get acquainted.

Q. When did he start coming over to the apartment? A. I wouldn't know.

Q. How long have you lived there? A. I have stayed there off and on 8 months.

Q. Are you living with Mrs. Davis at the present time? A. I am staying there, sir.

Q. Is your testimony designed to protect Mrs. Davis and hurt Mr. Pagliochini? A. I beg your pardon?

Q. Is your testimony designed to hurt Mr. Pagliochini and help Mrs. Davis? A. No, sir; I am telling the truth. I have accepted to testify as a state witness, and that is what I am doing.

Q. Have you discussed the case with Mrs. Davis? A. No, sir; not as far as --

THE COURT: No, sir, not as far as what?

THE WITNESS: Not as far as what I was going to say on the stand. I mean I have been with her since each hearing, coming up here.

BY MR. SURES:

Q. You never told Mrs. Davis what you expected to testify to? A. No, sir; I didn't.

119 Q. Did you talk to Mrs. Davis today? A. This morning.

Q. Did you talk to her about her testimony? A. No, sir.

Q. Did she tell you what she had testified to here today? A. No, sir.

Q. So that everything you have told us is without the benefit of having your recollection refreshed by discussing the matter with Mrs. Davis.

A. No, sir.

Q. Does the same apply with Mrs. Mims? A. That is right.

Q. Have you talked about the case with Mrs. Mims? A. No, sir.

Q. Have you talked about the case with anybody? A. No, sir.

Q. Have you talked about it to Mr. Caputy? A. No, sir.

Q. Did you ever talk to any Assistant United States Attorney? A. (No response.)

Q. Do you know what an Assistant United States Attorney is?

120 THE COURT: Did you ever talk to any Assistant United States Attorney in the court house about this case?

THE WITNESS: No, sir.

BY MR. SURES:

Q. Are you aware of the fact that when you testify and say that Mr. Pagliochini had the check in his hands and he gave it to Mrs. Davis, that it is very harmful to him for you to say that? A. I am testifying the truth, sir; that is all I am going to do.

Q. I want to ask you again --

THE COURT: Don't ask him again. The answer to your question is so obvious, it isn't necessary for him to answer.

MR. SURES: I am asking him if he is aware of the incriminating element when he states he saw Mr. Pagliochini give the check to Mrs. Davis.

THE COURT: Do you want to say anything?

THE WITNESS: I am testifying the truth, sir, and that is all.

BY MR. SURES:

Q. Do you remember when Mrs. Davis had the check? A. She had it when she went in the liquor store.

Q. Did she have it when she came out of the liquor store? A. Yes; she returned it to Joe at that time.

121 Q. Then you say she gave it back to Mr. Pagliochini? A. Yes, sir.

Q. Then what happened? A. Then went to the door of the clothing store, sir.

Q. Did he give her the check? A. I didn't see that, sir.

Q. Did you ever see her with the check again?

THE COURT: After they came out of the liquor store?

THE WITNESS: After they came out of the liquor store, she had the check and returned it to Joe.

THE COURT: After that, did you ever see her have possession of it again?

THE WITNESS: After the arresting officers were there and she had the check in her hands and she said she was in trouble because she had signed it. And I said, "Let me see it."

BY MR. SURES:

Q. That was on Thursday?

THE COURT: The next day.

THE WITNESS: The next day, whenever it was.

BY MR. SURES:

Q. You never saw her with the check again on Wednesday evening?

A. No, sir.

122 Q. You never saw the check in her purse? A. No, I never have gone in her purse.

Q. You never saw her take it out of her purse? A. No, sir.

Q. Or take it out of any pocket of any dress she may have had on?

A. No, sir.

MR. SURES: I have no further questions.

MR. CAPUTY: Might I ask one further question?

MR. SURES: I object, unless it is pertaining to redirect.

THE COURT: I wouldn't know.

MR. CAPUTY: If Your Honor please, I think I omitted a question; I would like to ask it with the Court's permission.

THE COURT: You have got it.

FURTHER REDIRECT EXAMINATION

BY MR. CAPUTY:

Q. On Wednesday when the check was attempted to be cashed when you were with Pagliochini and Davis and Mims, can you tell me how many endorsements were on the back of the check? A. Two.

Q. Which were they? A. Mrs. Trenary and John Moore.

123 Q. You stated, sir, Thursday, the next day, Mrs. Davis said she was in trouble because she signed on the check; is that right? A. She had put her name on the check.

Q. What name did she put on the check? A. Her own name, Mrs. Irene L. Davis.

MR. CAPUTY: That is all.

THE COURT: Let me ask you something. You said when he showed you that check and asked you if your brother would cash it and you then left -- and I thought you said, "Left to see" -- did you not go to your brother at any time along or with them?

THE WITNESS: No.

THE COURT: Never did try to get him to cash it?

THE WITNESS: No, Your Honor.

THE COURT: Did you ask either Pagliochini or Davis or Mims how they happened to be in possession of a United States Treasurer's check payable to Pearl L. Trenary in the sum of $572?

THE WITNESS: Yes.

THE COURT: Who did you ask?

THE WITNESS: I asked Joe Pagliochini and he said it was his wife's check.

THE COURT: Did you know whether he had a wife?

124 THE WITNESS: No, I didn't; I heard he had some kind of wife. I didn't know her name and I did think it was a little out of order that his name was Joe Pagliochini and the other was Pearl Trenary.

THE COURT: Did you ask him about that oddity?

THE WITNESS: I asked him how come he had it and he said it was his wife's check and they had a falling out and she took the furniture and belongings and he thought he was entitled to the cash.

THE COURT: All right. That is all. You are excused now.

(Witness left the stand.)

Is that your case, Mr. Caputy?

MR. CAPUTY: I have two other witnesses, Your Honor.

THE COURT: You are through for the day whether you know it or not. Ladies and gentlemen, I think we have heard all we need hear today. We will take up again tomorrow morning. Please remember not to discuss the case overnight. That will be all for today.

(Whereupon, at 3:43 o'clock p. m., the trial was recessed until 10:00 o'clock a. m., Wednesday, July 23, 1958.)

* * * * * * * * *

125 Wednesday, July 23, 1958

127 * * * * * * * * *

JOSEPH BONACCORSY

* * * * * * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your name and assignment? A. Joseph Bonaccorsy, Detective Sergeant, Metropolitan Police Check and Fraud Squad.

Q. What was your assignment on March 6, 1958? A. I was assigned to the Check and Fraud Squad.

Q. As such, did you assist in the investigation of a government check, payable to Pearl L. Trenary? A. I did.

Q. Did you go to the premises of 1418 Pennsylvania Avenue, Southeast?

A. I did.

Q. Is that in the District of Columbia? A. Yes, sir.

128 Q. To what part of the premises did you go? A. To the second floor.

Q. And in the second floor, was anyone there when you got there? A. Yes, sir, Irene Davis and Laverne Mims.

Q. I show you, sir, what has been marked Government's Exhibit No. 1 for identification which is a check drawn on the Treasurer of the United States and I ask you to examine it and tell us whether you can identify it.

A. I can, sir; my initials appear on part of this check, "J. B. 3/7/58."

Q. When did you see it? A. March 6, 1958.

Q. Where? Second floor, 1418 Pennsylvania Avenue, Southeast.

Q. In whose possession was it at that time? A. Irene Davis.

Q. Did you get it from her, sir? A. I did, sir.

Q. And to whom, if anyone, have you turned over Government's Exhibit No. 1 for identification after you received it. A. To the Secret Service Agent, Mr. Meredith.

Q. When, do you recall? A. That would be on 3/7/58.

129 Q. When you were at 1418 Pennsylvania Avenue, Southeast on March 6, 1958, did you make a search of the premises? A. I did, sir. I was unable to find the check. At first Mrs. Davis was in actually a stupor. She had been drinking. She was in the bed. I asked her about the check. She said she didn't have it at the present time. She didn't know where it was. After talking to her for a while, I told her I was going out and would be back in ten minutes that I wanted more information, wanted her to get the check. She said she had to get her daughter, Laverne Mims, to find it. She had it under the mattress.

Q. You were not able to find anyone else in the premises? A. No, sir.

Q. Did you search the premises? A. No, I didn't; I just looked around. There was a bedroom, diningroom and kitchen; that is as far as I looked around the apartment.

* * * * * * * * *

132 LYNN S. MEREDITH

* * * * * * * * *

DIRECT EXAMINATION

BY MR. CAPUTY:

Q. Will you state your name, sir, and occupation? A. My name is Lynn S. Meredith. I am a special agent with the United States Secret Service, Treasury Department.

Q. How long have you been a special agent for the United States Secret Service? A. I have been a special agent with the Secret Service for approximately five years.

Q. In this capacity, do you investigate the violations of Treasury checks? A. That is right.

133 Q. Did you assist, sir, or did you investigate an alleged forgery and uttering of a check drawn on the Treasurer of the United States, payable to Pearl L. Trenary? A. Yes, I did investigate that case.

Q. I show you, sir, what has been marked as Government's Exhibit No. 1 for identification, which is a Treasury check dated March 4, 1958, payable to Pearl L. Trenary, in the amount of $572 and I ask you to examine it and tell us whether you can identify it. A. Yes, I can identify this check. This is the check I investigated.

Q. When was it you first saw Government's Exhibit No. 1 for identification, please? A. I first saw this check on the morning of March 7, 1958.

Q. Where? A. In the office of Detective Joseph Bonaccorsy of the Check Squad, Metropolitan Police Department.

Q. Was it turned over to you, sir, by him? A. It was.

MR. CAPUTY: May I have this exhibit, if Your Honor please, which is a certification of Government's Exhibit No. 1 and a photostat of Government's Exhibit No. 1, may I have it marked 1-A for identification?

THE COURT: Yes.

134 THE CLERK: Government's Exhibit 1-A for identification.

(Photostat was marked Government's Exhibit No. 1-A, for identification.)

BY MR. CAPUTY:

Q. I show you what has been marked Government's Exhibit 1-A, which is a certification and photostat of Government's Exhibit 1. Did you have that certification and photostat prepared? A. I did; it was made by the Check Claims Division of the Treasury Department.

MR. CAPUTY: At this time, if Your Honor please, I would like to offer into evidence Government's Exhibit 1 for identification, which is the Treasury check and offer then Government's Exhibit 1-A; and I wish to substitute Government's Exhibit 1-A and substitute it for Exhibit No. 1 and withdraw Government's Exhibit 1.

THE COURT: It may be done.

THE CLERK: Government's Exhibits 1 and 1-A received.

(Government's Exhibits 1 and 1-A, previously marked for identification, were received.)

135 (Government's Exhibit No. 1 received in evidence, was withdrawn.)

BY MR. CAPUTY:

Q. Will you tell us whether you secured an arrest warrant for Joseph Pagliochini? A. I did.

Q. Where and when? A. He was arrested in the office of Mr. Sures, who is his attorney at this time.

Q. Did you talk with him, sir? A. I didn't.

Q. Did you ask him for any samples, specimens of his handwriting?

MR. SURES: I object, Your Honor. He already said he didn't talk to him.

BY MR. CAPUTY:

Q. Did you ask for specimens of his handwriting? A. I did ask for specimens of his handwriting.

Q. Were they given to you, sir? A. There were not.

MR. CAPUTY: That is all I have of this witness.

* * * * * * * * *

137 MR. SURES: Your Honor, at this time I would like to move for a judgment of acquittal, on the grounds that the Government has failed to prove a prima facie case or prove the defendant's guilt beyond a reasonable doubt as to either count, particularly with regard to the second count, the act of uttering and passing the check. This act was performed by Mrs. Mims and the endorsement was placed, in order to perform it, by Mrs. Davis. Mrs. Davis gave the check to Mrs. Mims to do it after she signed the check. I say that
138 independent act of signing the check, giving it to Mrs. Mims by Mrs. Davis is the act of passing and uttering which is exclusively Mrs. Mims' act, giving it to the landlord and getting the money. And, as a result, the second count is not proved at all. So, I move for a judgment of acquittal.

MR. CAPUTY: Mrs. Mims was unable to cash it the first time it was attempted to be cashed. The second time, it was Mr. Pagliochini who said for her to take that check down to Mr. Kirkpatrick. He is an aider and abettor. He is a principal.

THE COURT: I deny the motion for judgment of acquittal. Have you got any requests for instructions? Are you putting your man on the stand?

MR. SURES: No, sir.

THE COURT: You don't have any testimony then. Do you want me to instruct the jury they are not entitled to draw any inferences of guilt by failure of the defendant to testify?

MR. SURES: I would prefer Your Honor to remain silent.

THE COURT: Have you seen these, Mr. Caputy?

MR. CAPUTY: I have copies.

THE COURT: I don't have No. 3.

139 MR. SURES: I withdrew it. That is all, 1, 2, 4 and 5.

THE COURT: I will grant your No. 1 in substance. I will do it in my own way. I will give it in my own way. No. 2 is denied. Holland against United States, 348 U. S. indicates that if the Court properly instructs on reasonable doubt you shouldn't give this; it is an inconsistent theory of instruction. I will grant your 4 in substance, doing it again in my own way.

If you don't like the way I put it, call my attention to it at the end of my charge and I may or may not add anything to my charge. I usually include it in my charge.

MR. SURES: No. 5 shouldn't be there. I am sorry.

THE COURT: Only these three then?

MR. SURES; Yes.

THE COURT: I will give the charge on accomplices which will apply to the defendants of Davis and Mims. I cannot think of anything else that is peculiar to this case. Can you?

MR. SURES: Your Honor, technically is it proper for the defendant to renew his motion after his case is rested?

THE COURT: You are not putting in any testimony?

140 MR. SURES: No, Your Honor.

THE COURT: You are protected. I will give the charge on competency.

(In open Court:)

(Closing arguments of counsel for Government and Defendant were reported but not transcribed.)

CHARGE TO THE JURY

THE COURT: Ladies and gentlemen, the instructions I have for you in this case will be relatively brief. It does not present any difficult questions of law, which need disposition by me. There are certain general principles of law to which I first want to address myself. Some of you heard them before and some of you, I dare say, have not.

The first of these is that the indictment in this case is not evidence against the defendant; it is simply a charge against him, an allegation made against him and he is presumed in law to be innocent of that charge. And since it is a presumption of law, it is enough to acquit him by itself unless the evidence satisfies you beyond a reasonable doubt that he is guilty of the charge against him. The burden of proof in a criminal case is always upon the Government to establish the guilt, never upon the defendant to establish his innocence. And that burden may not be sustained by evidence which

creates a strong suspicion of guilt or points to probability of guilt; it must be something more than that. It must be that the evidence convinces you of his guilt beyond a reasonable doubt.

141 Now, that term, "beyond a reasonable doubt," is a term of art in the law, but it means in the law just what it would mean in your usage of it in your daily lives. It means what it says: a doubt which is reasonable; a doubt which is based upon reason. And it arises, if it does at all, from the evidence in the case or, if you think so, lack of necessary evidence in the case. It is the kind of doubt in contemplation of law as would cause a reasonably thoughtful and prudent person to hesitate to act if confronted with a matter of real importance concerning his own affairs. It is a kind of doubt as after a full and careful consideration of all the evidence would leave a juror's mind so undecided he does not have an abiding conviction of guilt which he believes would remain unshaken by future thought and reflection. Doubt is not generated by whim or caprice, nor speculation or conjecture, nor from feelings of sympathy or mercy.

The law recognizes reasonable doubt as a conscientious belief from all of the evidence that there is reason to doubt the guilt of the defendant. Now, in determining whether a defendant is guilty or not, whether you have a reasonable doubt or you don't, you must evaluate, weigh and analyze all of the evidence which you have heard. The testimony of each individual witness must be examined by you. Now, I believe your principal assistant in that

142 task is your own good common sense and your own experience in life. Draw on your own knowledge of human nature of people, why they do the things they do sometimes. Take into account the opportunities of the witnesses for observation, their sources of knowledge, their intelligence or lack of it, even education or lack of it sometimes is an element to be considered. Consider their motives for testifying as they have done, if you can discern their motives, good or bad as the case may be.

Take into account the manner and demeanor of the witness on the stand. Did he impress you as being forthright and candid or rather evasive? Did

you find in his testimony inconsistencies or discrepancies, either within his own testimony or in his testimony as contrasted with the testimony of someone or more of the other witnesses; and if you found inconsistencies and discrepancies, differences of one kind or another, then you have got to ask yourselves, what kind of an inconsistency is it you found? Is it the kind you would rather expect to find in the narrative of past events by a truthful person or the kind you would more likely encounter in the company of a falsehood and not truth?

Interest in the case or its result, friendship or animosity towards people concerned in the case may or may not affect the desire or even sometimes
143 the capacity of a witness to tell the truth. Now, you give to the testimony of each witness that weight to which you think it is entitled when viewed in the light of the considerations that I have just suggested to you; and when taken into context of the whole. It is my considered opinion, based upon many years of experience in the law and in the courts, the testimony of no one witness stands wholly alone; it must be viewed as a part of a whole, as a piece of a mosaic. The testimony of other witnesses throws light on the testimony of a given single witness. The testimony of another witness may detract, in your minds, from the value of a single witness. Take all of this testimony and analyze it. Now, if you believe that any witness testified falsely concerning a matter as to which he or she couldn't reasonably be mistaken, you may disregard the testimony of any such witness, either in whole or in part. Or, you may find a witness testified truthfully concerning one thing and lied to you about another thing. In such a situation, if that happened, you are free to accept what you think was the truth and reject what you think was false or you can reject it all, as you see fit.

Now, further on the subject of witnesses: The witness Irene Davis and Laverne Mims, as you have been told, were named in this indictment along
144 with the defendant Pagliochini as defendants and until yesterday morning remained in the case as such. Yesterday morning, with the Court's approval, the case was dismissed against them. Now, their own testimony and the rest of the testimony in the case you have heard shows clearly that if this

defendant had any part in this affair at all, they were his accomplices. It is the settled rule of law that accomplices in the commission of a crime are competent witnesses and that the Government has a right to use them as its witnesses.

Indeed, it is sometimes necessary and essential to the Government's case that accomplices be introduced as witnesses, and it is your duty to consider such testimony. It should, however, be received with caution and suspicion and scrutinized with care, because they are accomplices. The degree of credibility which should be given to the testimony of such witnesses is exclusively within your province and, but for the fact they are accomplices and that you should scrutinize their testimony with caution and suspicion, you evaluate their testimony otherwise exactly as you have the testimony of other witnesses in the case in accordance with the suggestions I made to you a few moments ago. You should, however, be able to find, in order to convict on the testimony of accomplices, some corroboration in the evidence of their testimony and that
145 corroboration should be substantial. Now, the Government points to one circumstance, one piece of testimony, which it urges upon you does corroborate these two women. One of them is that this defendant lived in the same apartment as Mrs. Trenary, whose check this is, and therefore had probable access to the check; whereas the woman, Mrs. Davis, and the girl, Mrs. Mims, did not live there, they lived somewhere else altogether.

And also, they point to the testimony of the witness Rollins, who is not an accomplice in the true sense -- he has not been indicted, of course, in this case. Rollins testified that the defendant Pagliochini had the check with the others there when he first saw it, and that Pagliochini asked him, that is, asked Rollins if his brother would cash it. Rollins said he did not know, but they made no effort to get his brother to cash it. Rollins said that he had gone with them when they went up to the point where they entered, I think, the liquor store and the clothing store. So that, if you believe Rollins' testimony and the circumstances of the defendant Pagliochini and Mrs. Trenary living in the same building, you would have enough corroboration as a matter of law, from the witness Davis and witness Mims, whether you believe Rollins or not. It

is for you to decide, like it is for you to decide whether any witness is telling
146 the truth or not. Now, then, the indictment in the case, as you have also been told, is in two counts, that is to say, there are two separate distinct offenses charged against this defendant. The first count charges the crime of forgery. It is brief and I will read it to you. The indictment charges that, "On or about March 5, 1958, within the District of Columbia, Irene L. Davis, Joseph A. Pagliochini, and Laverne C. Mims, for the purpose of obtaining and receiving from the United States, and from its officers and agents, $572, falsely forged the endorsements 'Pearl L. Trenary' and 'John Moore' on the back of a paper writing in the form of a check drawn upon the Treasurer of the United States. Following is a photostatic copy of said check with the falsely forged endorsements on the back:" and that photostat is attached to the first count of the indictment. The second count of the indictment charges the offense of uttering the check, that is to say, passing the check as a good check, and it reads as follows:

"On or about March 6, 1958, within the District of Columbia, Irene L. Davis, Joseph A. Pagliochini and Laverne C. Mims, with intent to defraud the United States, uttered and published as true and genuine to Everett L. Kirkpatrick, the paper writing in the form of a check drawn upon the Treasurer of
147 the United States, with certain falsely forged endorsements on the back thereof, which check is described and set out in the first count of this indictment and is incorporated herein by reference, well knowing that the endorsements on the back thereof had been falsely made and forged."

Now, the elements of the crime of forgery as charged in the first count of the indictment, each of which element must be established to your satisfaction beyond a reasonable doubt in order to convict the defendant are these: First, that there must be the false making of this instrument, the check; and by making, the law means either fabricating the whole document, the whole instrument, the whole check or by putting upon it a forged endorsement, that is to say, writing someone else's name without the authority of that person so to do. Here the writing of the name "Pearl L. Trenary" without Mrs. Trenary's

authority or knowledge and the writing of the name "John Moore" without his authority or knowledge. That is, then, the first element, the false making or forging of the instrument. Second, there must have been a fraudulent intent by so doing. That is to say, there must have been an intent on the part of the defendant to profit in some way by these forged endorsements on what is a genuine Government check. That intent must exist. And I suppose to put it simply, I shall not elaborate on it, with intent to profit in some way and to

148 deceive someone which in this case whomever, if anybody, accepted the check as genuine and believed the endorsements to be genuine. And thirdly, the third element of forgery is that the instrument, the paper writing fraudulently made and falsely presented would be capable of effecting a fraud. I think I can best explain that by the illustration that if I take a check of the United States Government and forge somebody's name on it and hand it over to you and ask you to give me money on the strength -- forge the name of the payee, that is -- and ask you to give me money on the strength of that forged signature. In doing so, I have forged a document, a paper writing, which is capable of affecting a fraud because when you see a United States Government check, to use this illustration, you are satisfied of two things: one, that it is what it purports to be, it is a Government check; and, two, that the Government will pay it, that you will get therefor your money back when you give someone money or property, goods, whatever, it may be in exchange for the check. So a bank check and a Government check are two examples of an instrument which is capable of affecting the fraud because people accept them as genuine and expect to be paid. They are the three elements of the crime of forgery.

149 Uttering a check means to pass it on to someone else as a good check, as a valid instrument, as an instrument worth something to the transferee of it, to the person to whom it is given. Now, the elements of that offense are three also, each of which must be established beyond a reasonable doubt in your mind. First, that the check which is uttered or passed was forged in some manner, here it alleges it was forged and that the signatures

of Pearl L. Trenary and John Moore were not the signatures of Pearl L. Trenary and John Moore; they are forged. And, second, that the forged check was passed on as genuine to Everett L. Kirkpatrick. And, three, finally, that when it was passed on to Everett L. Kirkpatrick in exchange for the advance of $25, the people who were engaged in this nefarious transaction knew it was a forged check; they had knowledge it was not what it purported to be. Now then, the witness Davis and the witness Mims each testified that this defendant Pagliochini did forge, himself, the signature of Pearl L. Trenary. They also testified that the Mims girl forged the name of John Moore at the request of Pagliochini and Mrs. Davis. And they testified -- and Mrs. Davis also said she signed her own name as the third endorsement when she tried to get it cashed by Mr. Kirkpatrick; and they both testified when that wasn't successful -- well, first, that she tried to get this check cashed by the bank at 8th and H and
150 then the branch of the City Bank at 8th and D, unsuccessful in both places; that then, at the request of the defendant Pagliochini, Mrs. Mims wrote the name "John Moore" who they were told was a depositor at that bank. So that was forged by Mrs. Mims, she says, at the request of the defendant Pagliochini, and Mrs. Davis took it back into the bank on a second try which also failed; and that then when they made the effort through Mr. Kirkpatrick, Mrs. Davis signed her own name, tried to get him to cash it but he was out when she first went down. She and Mrs. Mims first went down and he was out. Then Mrs. Davis and Mr. Pagliochini, according to the testimony of Mrs. Mims -- you heard her -- told Mrs. Mims to go down a little later and see if she could get it cashed; and she did succeed in getting from Mr. Kirkpatrick an advance of $25; and later she gave almost all of that back and got the check back.

Now, if you believe the testimony of Mrs. Davis and Mrs. Mims and Mr. Rollins to the effect that Mr. Pagliochini asked them, the two women, to try to get this check cashed and asked Mrs. Mims to forge the name of "John Moore" and asked Mrs. Mims to pass the check to Mr. Kirkpatrick as a valid subsisting instrument, then even though he did not himself pass the check, he would be guilty as a principal equally with the other two as an aider and

abettor, because one who aids either in procuring a crime to be committed,
151 assists in some way in its commission, directs its commission or purveys its commission, is just as guilty as the principal is. Now, I will give you an illustration of that principle of law which I think is simple and graphic, therefore clear. Take the case of two people who set out to rob a bank; one of them drives a car to the bank and his associate goes into the bank and holds up the bank, comes out with the money and gets into his friend's car and drives away. The only one who literally held up the bank is the one who went into the bank, of course. The driver didn't go into the bank, he was sitting there minding his own business in the automobile. The trouble is his own business is assisting in robbing the bank. He is equally guilty as the one who went into the bank and held it up and took the money. That is what is meant when we tell you and aider and abettor is as guilty as the principal.

If you believe the testimony, therefore, that Pagliochini signed the name "Pearl L. Trenary" or "John Moore" -- well, he did not sign "John More" -- if you believe he signed the name "Pearl L. Trenary" or persuaded the girl Mims to sign the name "John Moore," he would be equally guilty with her and with Irene Davis, who is also in on it. If you believe that this instrument was passed as genuine, knowing that it was not genuine, to Mr. Kirkpatrick
152 at the suggestion or request of Pagliochini, he would be equally guilty with Mrs. Mims, who actually took it down there and got the $25. That is all I have to say unless either side wants to say something.

MR. CAPUTY: No, Your Honor.

MR. SURES: May we approach the Bench?

THE COURT: You may.

(At the Bench:)

MR. SURES: If Your Honor please, it is my opinion that what Your Honor just said to the jury that Mr. Pagliochini would be guilty if he did thus and so -- it tends to directing a verdict in a civil case. I would ask Your Honor to do this: To tell the jury not that he would be guilty -- that is up to them because they are the jury.

THE COURT: If they believe and don't have a reasonable doubt about the testimony I just pointed out he would be guilty. They can't find the man guilty unless they believe the testimony.

MR. SURES: My objection is it seems to me like that is sort of directing a verdict.

THE COURT: I don't know of any other way to charge them on the meaning of aider and abettor than that.

MR. SURES: I object for the record.

153 THE COURT: All right.

(In open Court:)

THE COURT: Ladies and gentlemen, as you probably know, your first business in the jury room will be to select among yourselves, for purposes of this case, a foreman. Having done this, I wish you would proceed rather carefully and deliberately under the general guidance of your foreman, so that you won't ever get in a situation where you are talking and not listening, and everybody is talking at once. Try to keep it orderly. Your verdict will be a separate verdict on each count of the indictment. Your verdict will be either guilty or not guilty as the case may be, separately. The state of the evidence in this case is such, however, that I cannot see how in logic you could find the defendant guilty of one count and not guilty of the other; he is either guilty of both counts of this indictment or not guilty. Under the evidence you could not logically rationalize any other verdict, but, technically, your verdict must be separate. When you are ready let the Marshal know and we will take your verdict.

Mr. Mantzouranis and Mrs. Hollins (alternate jurors), you are excused from further service in this case. I will ask you please not to discuss this case until this jury has reached its verdict. I am told you are not needed now until after you have had your lunch. Thank you very much.

154 (The jury retired.)

(Upon return of the jury to the courtroom, the following proceedings were had:)

THE CLERK: You are the foreman?

THE FOREMAN: That is right.

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: They have.

THE CLERK: What say you as to the defendant Joseph A. Pagliochini as to Count 1?

THE FOREMAN: Guilty.

THE CLERK: What say you as to defendant Joseph A. Pagliochini as to Count 2?

THE FOREMAN: Guilty.

* * * * * * * * *

[Filed Sep. 2, 1958] UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

On this 2nd day of September, 1958 came the attorney for the government and the defendant appeared in person and by counsel, James K. Hughes, Esquire;

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Violation of Title 18, United States Code, Sec. 495, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

Twenty (20) months to Five (5) years.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ H. A. SCHWEINHAUT
United States District Judge

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,671

United States Court of Appeals
For the
District of Columbia Circuit
FILED DEC 26 1958
Joseph W. Stewart
CLERK

JOSEPH ANTHONY PAGLIOCHINI,
Appellant

v.

UNITED STATES OF AMERICA
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ALBERT J. AHERN, JR.
National Press Building
Washington 4, D. C.

Bill Austin Services, Inc.
Printers
Washington, D. C.
EX. 3-3239

QUESTION PRESENTED

1. Did not the Trial Judge commit prejudicial error affecting substantial rights in denominating Rollins' testimony as other than accomplice testimony simply because Rollins was not indicted as were the other two accomplices?

TABLE OF CONTENTS

	Page No.
Jurisdictional Statement.	1
Statement of the Case	2-3
Statement of Points	3-4
Argument:	
I. The Trial Judge committed a basic and prejudicial error in his instruction to the jury as to the testimony of the witness Rollins when he stated he was not an accomplice "in the true sense" since he was not indicted when in fact his testimony on direct examination branded him as an accomplice as a matter of law	4-7
Conclusion	7

INDEX TO CASES

Fox v. Commonwealth, 58 S. W. 2d 608	5
Gosett v. Commonwealth, 118 S. W. 2d 764	5
Johnson v. Commonwealth, 120 S. W. 2d	5
People v. Cummings, 59 N. E. 2d 437.	6
People v. King, 85 Pac. 2d 929	5
People v. Martin, 85 Pac. 2d 880	6
People v. Payton, 96 Pac. 2d 991	6
State v. Boneman, 70 Pac. 2d 458; 92 Utah 540; Ill. A.L.R. 1393	6
State v. Coffey, 72 Pac. 2d 35; 157 Ore. 457	6
United States v. Neverson, 1 Mackey 152; 12 D. C. 152	6

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,671

JOSEPH ANTHONY PAGLIOCHINI,

Appellant

vs.

UNITED STATES OF AMERICA,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF ON BEHALF OF APPELLANT

JURISDICTIONAL STATEMENT

The appellant was convicted for forgery and uttering and sentenced to 20 months to 5 years. Notice of Appeal was timely filed. This appeal follows.

Rule 52(b) of Federal Rules of Criminal Procedure:

> "Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

STATEMENT OF THE CASE

The appellant was charged in a two-count indictment, one count alleging forgery, the other count alleging that he fraudulently and falsely uttered a forged document.

In support of the Government's case they called one Pearl Trenary who lived at 4785 Humm Avenue, S. E. She testified that she did not endorse a certain check that was mailed to her. The Government then called Virginia Phillips who testified that she was a teller at the City Bank (Joint Appendix 7) and that a Mrs. Davis presented the check with the endorsement of Pearl L. Trenary on it (Joint Appendix 8). She stated that Mrs. Davis returned again with the check (Joint Appendix 8). She testified that this time the signature of a John Moore was added on the check (Joint Appendix 8-9). One Everett L. Kirkpatrick testified that a Laverne Mims presented it to her for payment. (J.A. 9-14).

An Irene L. Davis was called to the stand by the Government and testified that Laverne Mims was her niece. She testified that appellant slept in her place the night of March 5, 1958. (J.A. 25). She testified that she was separated from her husband (Joint Appendix 25). When questioned by the Police she testified that she told them that Irene L. Davis was her daughter and she told the Police that she knew where the check was that they were seeking (R. 40, J.A. 25). She testified that her husband was in debt (J.A. 28) and admitted that she offered to negotiate the check to a representative of a finance company who called at the door for payment of a debt (J.A. 29). She testified that she suggested where the check might be cashed at a certain liquor store (J.A. 29). She testified that Laverne Mims signed the name John Moore on the back of the check (J.A. 31-32). She admitted that she was indicted on the charges for which appellant stood trial and that they had been dismissed against her (J.A. 31-32). She admitted that she was staying with a Mr. Rollins (J.A. 33) and admitted that she was addicted to the use of alcohol (J.A. 33-4).

The Government then called Laverne Mims who testified that she saw appellant on March 5, 1958. (J.A. 39). She testified that although married she had an affair with the appellant (J.A. 48). She testified that appellant had the check in question on March 5, 1958 (J.A. 50). She testified that she admitted she lied to the Police when they came (J.A. 50-51). She testified that appellant signed Trenary's name to the check (J.A. 51). She admitted on examination that the witness Davis said she thought she could get the check cashed (J.A. 52). She testified that Davis took the check to a second bank and then to a liquor store in an attempt to cash it (J.A. 54).

The Government called one Paul Rollins who testified that he knew both Davis and Mims and that he knew appellant (J.A. 62). He testified that he saw appellant at the apartment on March 5 (J.A. 62-3). He testified that appellant had the check (J.A. 63). He testified that appellant asked where the check could be cashed and that he, Rollins, suggested a place at 8th and E Streets, N. W. (J.A. 64). He testified about his unsuccessful attempts in the liquor store and he then testified appellant asked whether his brother would cash the check (J.A. 114). He said appellant asked him if he would cash the check and if he would he would give him $100 from the proceeds of the check (J.A. 64). He admitted that he now was staying with Mrs. Davis (J.A. 66), and testified as to another unsuccessful attempt to cash the check at a clothing store (J.A. 64). The appellant did not testify. The case was submitted to the jury. The appellant was convicted. This appeal follows:

STATEMENT OF POINTS

1. Substantial prejudice occurred even in the absence of an objection when the Trial Judge instructed on accomplice testimony and how it related to the testimony of Paul Rollins and compounded the prejudice with an improper comment on the effect of said evidence which viewed in the light of

this record should command this Court, in order to see that substantial justice is obtained, to reverse the judgment of the court below.

ARGUMENT

I. In this case the appellant's conviction rests on the testimony of Laverne C. Mims and Irene L. Davis who were jointly indicted with him (J.A. 1 and 2).

The Trial Judge correctly instructed the jury (J.A. 77 through 78) that they were accomplices and correctly instructed the jury on the manner in which they should scrutizine their testimony. The Trial Judge, however, committed a basic and prejudicial error when he commented on the testimony of the witness Rollins (J.A. 78). The Trial Judge stated:

> "And also, they point to the testimony of the witness Rollins, who is not an accomplice in the true sense -- he has not been indicted, of course, in this case."

The Trial Judge then went on to describe some of the testimony given by Rollins which on direct examination branded him as an accomplice as a matter of law whether or not he was indicted like Davis or Mims. The effect of the Trial Judge's instruction was to put the testimony of Rollins on a higher plane than that of Mims or Davis because Mims and Davis were accomplices because of the fact they were indicted whereas Rollins was not an accomplice "in the true sense" since he was not indicted.

The testimony of Rollins is reflected in the Joint Appendix at 62 through 69 and giving the Government the benefit of all doubts it clearly establishes the following facts:

1. That he knew Davis (J.A. 62).
2. That he knew Pagliochini (J.A. 62).
3. That he saw the appellant on the date mentioned in the indictment, March 5, 1958 (J.A. 62).
4. That the defendant Laverne Mims was there (J.A. 63).

5. That there was a conversation concerning the check and that he was shown Government's Exhibit No. 1 (J.A. 63).

6. That he was requested to cash the check or assist in cashing the check (J.A. 64).

7. That he left with the appellant and the defendants Mims and Davis in an attempt to cash the check and that the appellant asked him if his brother would cash the check.

8. That they went to a clothing store in an attempt to cash the check.

9. That he was in the car when the defendant Davis went in to the liquor store to cash the check and that the four of them later returned to the apartment (J.A. 65).

The above facts made Rollins an accomplice as a matter of law and within the purview of People v. King, 85 Pac. 2d 929, wherein the Court in announcing the principle as to who was an accomplice stated:

> "Where the acts and conduct of the witness are admitted, it becomes a question of law for the Court to say whether or not those acts and facts make the witness an accomplice. People v. Coffey, 161 Cal. 433; 119 Pac. 901 and People v. Heink, 276 Pac. 625."

Other cases which have announced that the record often requires a Trial Judge to rule that one is an accomplice as a matter of law are:

> Gosett v. Commonwealth, 118 S.W. 2d 764.
> Johnson v. Commonwealth, 120 S. W. 2d 411.
> Fox v. Commonwealth, 58 S. W. 2d 608.

Even if it be contended that the testimony on this record did not require a determination that Rollins was an accomplice as a matter of law, he clearly was an accomplice as a matter of fact and this should have been submitted to the jury for its consideration. This is illustrated in the

case of People v. Martin, 85 Pac. 2d 880, wherein the Court in dealing with the question as to whether a given witness was or was not an accomplice stated:

> "However, the existence of such knowledge or intent need not be directly or positively proven, but may be inferred from circumstances. And whether or not the alleged aider and abettor knew and shared the principal's criminal intent is a question of fact for the jury to be inferred from circumstances. State v. Ochoa, 41 New Mexico 789; 72 Pac. 2d 609."

Also, we call the Court's attention to this Court's decision in United States v. Neverson, 1 Mackey 152; 12 D. C. 152, wherein the Court stated:

> "Whether a witness is an accomplice or only an innocent witness of the transaction is a question to be decided by the jury from the evidence in the case."

Other cases which hold that where there is dispute as to whether a witness is or is not an accomplice on the facts the matter should be referred to the jury for their determination are: People v. Payton, 96 Pac. 2d 991 and People v. Cummings, 59 N.E. 2d 437.

The Trial Judge was clearly wrong in suggesting to the jury that in order to be an accomplice "in the true sense" one need by indicted as a principal. The fundamental definition of an accomplice is one who can be indicted and punished under the same statute which has been invoked against the defendant. State v. Coffey, 72 Pac. 2d 35; 157 Ore. 457: or, that an accomplice is one who could be charged as a principal with the defendant on trial. State v. Boneman, 70 Pac. 2d 458; 92 Utah 540; 111 A.L.R. 1393.

Under the facts as elicited in this record the witness Rollins was either as a matter of law or as a question of fact an accomplice of the appellant and as such the Trial Judge should have instructed the jury to scrutinize his testimony in the same fashion as he instructed the jury to view the testimony of the indicted accomplices Mims and Davis.

It is true that no objection was taken to the Trial Judge's instruction by trial counsel. However, we suggest to this Court that Rule 52(b) should be

invoked and that the error is so substantial as to require reversal. We say that 52(b) should be invoked in this case not only because the appellant was convicted on the testimony of accomplices but that the Trial Judge in commenting to the jury on the evidence highlighted and pointed out the testimony of the witness Rollins as corroborating evidence, suggesting that it could justify a verdict of guilty. In this connection we wish to suggest to this Court that while we recognize the right of a Federal Judge to comment on the evidence and in connection with the point heretofore discussed, the comments made by the Trial Judge in this case with respect to the witness Rollins' testimony highlighted the prejudice particularly in view of the fact that the appellant put on no defense. We suggest to this Court that the rule on comment by a Trial Judge should be even more restrained and more cautious when an accused puts on no defense and the effect of the Trial Judge's comment is a one-way comment which can only enure to the Government's benefit.

In light of the above we ask this Court to notice the plain and substantial error, do not penalize the appellant for failure of trial counsel to object and award the appellant a new trial.

CONCLUSION

We feel that the erroneous instruction and comment by the Court to the jury to the effect that the witness Rollins was not an accomplice in the "true sense" was substantial error within Rule 52(b) of the Federal Rules of Criminal Procedure and should prompt this Court to reverse the judgment of the Court below.

Respectfully submitted,

ALBERT J. AHERN, JR.
National Press Building
Washington, D. C.
Counsel for Appellant

Dated:

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14671

169

JOSEPH ANTHONY PAGLIOCHINI, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OLIVER GASCH,
United States Attorney.
CARL W. BELCHER,
JEROME A. COHEN,
Assistant United States Attorneys.

United States Court of Appeals
For the
District of Columbia Circuit

FILED JAN 20 1959

Joseph W. Stewart

CLERK

No. 14671

QUESTION PRESENTED

Whether the district court, by instructing the jury that a subsidiary government witness was not an accomplice, committed plain error affecting substantial rights.

494249—59

INDEX

	Page
Counterstatement of the case	1
Statutes involved	6
Summary of argument	8
Argument:	
The trial judge correctly charged the jury; in any event, the instruction did not affect substantial rights	8
A. *The trial judge correctly instructed the jury that Rollins was not an accomplice*	9
B. *Assuming plain error in the charge on Rollins, it did not affect substantial rights*	11
Conclusion	13

TABLE OF CASES

Ballard v. *United States*, 99 U.S. App. D.C. 101, 237 F. 2d 582 (1956)	11
Bishop v. *United States*, 100 U.S. App. D.C. 88, 243 F. 2d 32 (1957)	11
Egan v. *United States*, 52 App. D.C. 384, 287 Fed. 958 (1923)	9, 12
Fox v. *Commonwealth*, 248 Ky. 466, 58 S.W. 2d 608 (1933)	12
Gossett v. *Commonwealth*, 274 Ky. 468, 118 S.W. 2d 764 (1938)	12
Johnson v. *Commonwealth*, 274 Ky. 799, 120 S.W. 2d 411 (1938)	12
Kotteakos v. *United States*, 328 U.S. 750 (1946)	12
Krulewitch v. *United States*, 336 U.S. 440, 444–445 (1949)	12
Moore v. *United States*, —— U.S. App. D.C. —— (No. 14407, November 20, 1958)	9
People v. *King*, 85 P. 2d 928 (1938)	9
Tomlinson v. *United States*, 68 App. D.C. 106, 93 F. 2d 652 (1937)	9

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14671

JOSEPH ANTHONY PAGLIOCHINI, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On April 8, 1958, appellant and Irene L. Davis and Laverne C. Mims were charged in a two-count indictment with forgery and with uttering a forged document in violation of 18 U.S.C., § 495. Count one charged that on or about March 5, 1958, the defendants had falsely and fraudulently forged the endorsements "Pearl L. Trenary" and "John Moore" on the back of a check drawn upon the Treasurer of the United States in the amount of $572.00 and made payable to Pearl L. Trenary (J.A. 1). Count two alleged that on or about March 6, 1958, defendants had fraudulently uttered this forged check as genuine to Everett L. Kirkpatrick, knowing the endorsements to have been forged (J.A. 2).

Prior to commencement of the trial on October 28, 1958, the charges against Irene L. Davis and Laverne Mims were dismissed with approval of the district court (District Court Docket, Entries of July 22, 1958). After two days of trial

a jury found that appellant was guilty as charged on each count (J.A. 84). Judgment of conviction was entered on September 2, 1958, and appellant was sentenced to serve from twenty months to five years in prison (J.A. 84). This appeal followed.

At Trial

Pearl L. Trenary testified that she knew appellant only by sight and that in March of 1958 he occupied an apartment in the same apartment building in which she resided. She had a mailbox in that building, which was owned by appellant's mother (J.A. 4). She expected a check early in March for disability compensation payable to her from the Treasurer of the United States, and on March 4 was notified that the check should have arrived (J.A. 5). After identifying Government's Exhibit No. 1 as a check drawn on the Treasurer of the United States payable to her, Mrs. Trenary said that the endorsement "Pearl L. Trenary" on the back of the check was not her signature (J.A. 5). She had not endorsed the check and had not given appellant or anyone else permission to do so (J.A. 6).

Virginia Phillips testified that in March of 1958 she was a teller at a branch of the City Bank in the District of Columbia and had seen the check in question "around the first week in March" (J.A. 7). Irene Davis had presented the check to her at the bank at a time when the check bore only the purported endorsement of Mrs. Trenary. When the bank refused to cash the check Mrs. Davis left and returned approximately one hour later in another attempt to cash it. At this time the check bore what purported to be the additional endorsement of "John Moore," a depositor at the bank. A comparison of that endorsement with other signatures of Moore led the witness again to refuse to cash the check (J.A. 8).

Everett L. Kirkpatrick testified that he owned a beauty salon in the District of Columbia, that he knew Irene Davis and Laverne Mims but not appellant, and that on March 6, 1958, Mrs. Mims presented him with the check marked as Government's Exhibit No. 1 and asked him to cash it as a favor for Mrs. Davis. The check at that time bore the Trenary and Moore endorsements (J.A. 10). Kirkpatrick told Mrs. Mims that he would cash the check at his bank if Mrs. Davis,

who was a tenant of his living above the beauty shop, would endorse it. Mrs. Mims subsequently returned the check to him with the Davis endorsement, and he then advanced her $25.00 of the face amount in anticipation of his cashing the check at the bank the next day. She later returned, however, retrieved the check and substantially reimbursed Kirkpatrick (J.A. 11).

Irene Davis testified that she knew both appellant and Laverne Mims, who was her niece, and that she first saw the check in question on March 5, 1958, when appellant showed it to her. The check at that time bore no endorsement (J.A. 15). Appellant asked her to cash it for him or to tell him where it could be cashed. On the way to a bank, in the presence of Mrs. Davis and Mrs. Mims and in the District of Columbia, appellant wrote the name "Pearl L. Trenary" on the back of the check (J.A. 16). When efforts to cash the check proved unsuccessful at this bank appellant suggested trying the City Bank. When that bank required the signature of a depositor on the check, appellant asked Mrs. Mims to add the name "John Moore" to the check. After she did so, in the District of Columbia, he accompanied Mrs. Davis into the bank for a second unsuccessful attempt to cash the check (J.A. 17).

After inquiring at liquor and clothing stores, Mrs. Davis returned to her apartment (J.A. 18). Later that day, Paul Rollins joined the group, and appellant asked him to cash the check or to persuade his brother to do so. Rollins "said he didn't want to be bothered with it." Moreover, he didn't think his brother would cash it. Mrs. Davis, again under appellant's direction, and in the company of appellant, Mims and Rollins, made another unsuccessful effort to cash the check at the liquor store and then gave the check back to him (J.A. 19–20). The next morning, March 6, appellant returned to her apartment and, at his request, she again tried to cash the check at the clothing store. Appellant and Mrs. Mims then told her that her landlord would cash it if she signed her name to it, which she did. Mrs. Mims subsequently returned with $25.00. Later in the day, having been told by the police "that the check was a stolen check," Mrs. Davis sent Mrs. Mims to retrieve it from her landlord (J.A. 21–22).

Laverne Mims testified to substantially the same facts as Mrs. Davis had related, including appellant's endorsement of the check with the name of "Pearl L. Trenary," her own endorsement of the name "John Moore" at the request of appellant and Mrs. Davis, the many unsuccessful attempts by appellant and Mrs. Davis to cash the check, and her own presentation of the check to Mr. Kirkpatrick under appellant's direction (J.A. 39–45). She further stated that on March 8 appellant told her he was going to give himself up and admit taking the check and forging the name of "Pearl L. Trenary." He also told her he would protect her by saying he forged the name "John Moore" (J.A. 61).

Paul Rollins testified that when he arrived at Mrs. Davis' apartment the evening of March 5, 1958, appellant asked him if he knew where appellant could cash a check. When Rollins suggested a restaurant, appellant showed him the check in question, which he saw was for $572.00 (J.A. 62–63). Appellant, Mrs. Davis, Mrs. Mims and Rollins then went for a ride to try to cash the check. Mrs. Davis was unsuccessful in a liquor store. As they approached a clothing store appellant asked Rollins whether his brother would cash the check, and he said he didn't know. Appellant offered him $100.00 if he would try to get his brother to do it (J.A. 64–65), but Rollins made no such attempt (J.A. 69). At the time Rollins first saw the check on March 5th, it bore the Trenary and Moore endorsements. Appellant told Rollins that it was his wife's check. When Rollins asked him how he happened to have it, appellant told him that he and his wife had quarreled and since she took their personal property, he thought he was entitled to the cash (J.A. 69–70).

The Government called two other witnesses and rested. Appellant's motion for judgment of acquittal was denied, and he offered no defense. Appellant's counsel submitted three requests for instructions to the jury, none of which related to treatment of accomplice testimony. One was denied, and the district judge stated that he would instruct the jury substantially in accord with the two other requests (J.A. 74). He admonished defense counsel "If you don't like the way I put it, call my attention to it at the end of my charge and I may

or may not add anything to my charge." After a brief colloquy, the trial judge said:

> I will give the charge on accomplices which will apply to the defendants of Davis and Mims [sic]. I cannot think of anything else that is peculiar to this case. Can you?

Appellant's counsel replied by preserving his motion for acquittal (J.A. 75).

After giving extensive instructions on the meaning of "reasonable doubt" and "credibility" of witnesses, the district court went on to say in part:

> Now, further on the subject of witnesses: The witness Irene Davis and Laverne Mims, as you have been told, were named in this indictment along with the defendant Pagliochini as defendants and until yesterday morning remained in the case as such. Yesterday morning, with the Court's approval, the case was dismissed against them. Now, their own testimony and the rest of the testimony in the case you have heard shows clearly that if this defendant had any part in this affair at all, they were his accomplices. It is the settled rule of law that accomplices in the commission of a crime are competent witnesses and that the Government has a right to use them as its witnesses.
>
> Indeed, it is sometimes necessary and essential to the Government's case that accomplices be introduced as witnesses, and it is your duty to consider such testimony. It should, however, be received with caution and suspicion and scrutinized with care, because they are accomplices. The degree of credibility which should be given to the testimony of such witnesses is exclusively within your province and, but for the fact they are accomplices and that you should scrutinize their testimony with caution and suspicion, you evaluate their testimony otherwise exactly as you have the testimony of other witnesses in the case in accordance with the suggestions I made to you a few moments ago. You should, however, be able to find, in order to convict on the testi-

mony of accomplices, some corroboration in the evidence of their testimony and that corroboration should be substantial. Now, the Government points to one circumstance, one piece of testimony, which it urges upon you does corroborate these two women. One of them is that this defendant lived in the same apartment as Mrs. Trenary, whose check this is, and therefore had probable access to the check; whereas the woman, Mrs. Davis and the girl, Mrs. Mims, did not live there, they lived somewhere else together.

And also, they point to the testimony of the witness Rollins, who is not an accomplice in the true sense—he has not been indicted, of course, in this case. Rollins testified that the defendant Pagliochini had the check with the others there when he first saw it, and that Pagliochini asked him, that is, asked Rollins if his brother would cash it. Rollins said he did not know, but they made no effort to get his brother to cash it. Rollins said he had gone with them when they went up to the point where they entered, I think, the liquor store and the clothing store. So that, if you believe Rollins' testimony and the circumstances of the defendant Pagliochini and Mrs. Trenary living in the same building, you would have enough corroboration as a matter of law, from the witness Davis and witness Mims, whether you believe Rollins or not. It is for you to decide, like it is for you to decide whether any witness is telling the truth or not. (J.A. 77–79.)

At the close of the charge appellant's counsel made no mention of dissatisfaction with that part of the charge relating to accomplice testimony but did object, unsuccessfully, to another portion (J.A. 82–83).

STATUTES INVOLVED

United States Code, Title 18, Section 495:

CONTRACTS, DEEDS, AND POWERS OF ATTORNEY

Whoever falsely makes, alters, forges, or counterfeits any deed, power of attorney, order, certificate, receipt,

contract, or other writing, for the purpose of obtaining or receiving, or of enabling any other person, either directly or indirectly, to obtain or receive from the United States or any officers or agents thereof, any sum of money; or

Whoever utters or publishes as true any such false, forged, altered, or counterfeited writing, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited; or

Whoever transmits to, or presents at any office or officer of the United States, any such writing in support of, or in relation to, any account or claim, with intent to defraud the United States, knowing the same to be false, altered, forged, or counterfeited—

Shall be fined not more than $1,000 or imprisoned not more than ten years, or both. (June 25, 1948, ch. 645, § 1, 62 Stat. 711.)

Federal Rules of Criminal Procedure, United States Code, Title 18, Rule 30:

At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

Federal Rules of Criminal Procedure, United States Code, Title 18, Rule 52:

(a) *Harmless Error.* Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded.

(b) *Plain Error.* Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

SUMMARY OF ARGUMENT

Appellant did not request an accomplice instruction as to the testimony of Paul Rollins, a subsidiary government witness, nor did he object to the instruction that Rollins was not an accomplice. In these circumstances appellant must demonstrate that the court's instruction constituted "plain error" and "affected substantial rights." The instruction was correct since the undisputed evidence showed that Rollins did not knowingly aid in the commission of the crimes charged. In any event, substantial rights were not prejudiced in view of the fact, conceded by appellant, that conviction rested on the testimony of two other witnesses and not upon the limited, cumulative evidence given by Rollins.

ARGUMENT

The trial judge correctly charged the jury; in any event, the instruction did not affect substantial rights

Appellant urges reversal of his conviction on the sole ground that the district court erred in instructing the jury that Paul Rollins was not an accomplice. Appellant does not claim that his retained trial counsel, who requested several instructions, included an accomplice instruction among them (J.A. 74–75). Moreover, when the trial judge announced that he planned to give an accomplice instruction as to Mrs. Davis and Mrs. Mims and asked for other recommendations, appellant's counsel did not suggest that such an instruction be given as to Rollins (J.A. 74–75). And he raised no objection to the charge given on Rollins' testimony, although he did object to another part of the charge (J.A. 82–83). In these circumstances appellant concedes that Rule 30 of the Federal Rules of Criminal

Procedure [1] bars him from challenging the instruction on Rollins unless he demonstrates that it was "plain error" and affected his "substantial rights". Rule 52(b), F.R. Cr P.; [2] *Moore* v. *United States*, —— U.S. App. D.C. —— (No. 14407, November 20, 1958). No such showing can be made in this case.

A. The trial judge correctly instructed the jury that Rollins was not an accomplice

An accomplice is one who "knowingly and voluntarily" aids another in the commission of a crime. *Tomlinson* v. *United States*, 68 App. D.C. 106, 93 F. 2d 652 (1937); *Egan* v. *United States*, 52 App. D.C. 384, 287 Fed. 958 (1923). "To establish [a witness] as an accomplice, a corrupt cooperation in the commission of the crime must be shown." *E. g.*, *People* v. *King*, 85 P. 2d 928 (1938). According to this standard the trial judge was clearly correct in telling the jury that Paul Rollins was not "an accomplice in the true sense" (J.A. 76).

Because the evidence of Rollins' conduct was undisputed, the question whether he was an accomplice was a matter of law for the court to decide, and not a question of fact for submission to the jury. *Egan* v. *United States*, *supra*. This evidence provided no basis for a finding that Rollins "knowingly" cooperated with appellant in the commission of the crimes

[1] "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies on such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury." F.R. Crim. P., U.S.C., Title 18, Rule 30.

[2] "(a) Harmless Error. Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. (b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." F.R. Crim. P., U.S.C., Title 18, Rule 52.

charged. Obviously, Rollins was not implicated in the forgery violation, since the false signatures were already on the checks when he first arrived on the scene (J.A. 16–19, 69). Nor can he be branded an accomplice to the uttering violation. Nothing in the record suggests that he knew the endorsements were forged, and that an attempt was being made to defraud the United States, when he talked with appellant in the Davis apartment on March 5, 1958, or when he accompanied appellant, Davis and Mims in their subsequent attempt to cash the check at the liquor and clothing stores. Not until appellant's car approached the clothing store, when appellant offered him $100 if he would persuade his brother to cash the check, should Rollins have become suspicious of the transaction (J.A. 64–65). And the record plainly shows that he did not comply with appellant's request and from that time took no other action in his behalf (J.A. 19, 69).

Appellant suggests that the court below stated that Rollins was not an accomplice solely because he had not been indicted. Although the single sentence now seized upon by appellant is open to this interpretation, it is more consonant with the charge as a whole, the evidence, and the court's questions at the trial, to read the sentence otherwise. What the court said, in effect, was that the evidence showed that Rollins "is not an accomplice in the true sense [and therefore] he has not been indicted, of course, in this case." Certainly the trial judge made it plain that Mims and Davis were accomplices not because they had been indicted but because "their testimony and the rest of the testimony in the case" clearly showed it (J.A. 77–78). And at trial the judge had carefully inquired into the extent of Rollins' knowledge of and participation in appellant's conduct (J.A. 69–70). Moreover, even if the court did believe that Rollins was not an accomplice solely because he had not been indicted, its failure to give an accomplice instruction as to his testimony was nevertheless correct, since the evidence did not warrant it. And in no event can the court's charge be deemed "plain error."

B. Assuming plain error in the charge on Rollins, it did not affect substantial rights

Assuming, *arguendo*, that close scrutiny of the record could reveal "plain error" in the charge on Rollins' testimony, appellant's "substantial rights" were unaffected. The instruction as a whole provided proper guidance for the jury and dwelt extensively upon the criteria for judging the credibility of witnesses (J.A. 76–77). And vigorous cross-examination of Rollins, Mims and Davis had developed the nature of Rollins' relationship to appellant and to the two women, as well as other factors bearing on his veracity.

Far beyond this in significance, however, is the simple fact that Rollins' testimony was unimportant to the government's case. Appellant concedes that his conviction rested on the testimony of Mims and Davis and that the jury received proper instructions as to their testimony (brief for appellant, p. 4). This evidence in itself amply supported the verdict, since in this jurisdiction the uncorroborated testimony of a single accomplice may by itself sustain conviction so long as the jury is instructed that such testimony must be received with caution. *E.g.*, *Bishop* v. *United States*, 100 U.S. App. D.C. 88, 243 F. 2d 32 (1957); *Ballard* v. *United States*, 99 U.S. App. D.C. 101, 237 F. 2d 582 (1956). Rollins did not testify to the forgeries that resulted in conviction on count one of the indictment. Nor did he witness the uttering with which count two charged appellant. He merely testified to the attempted uttering the evening before the second crime was committed. His testimony served to corroborate only a minor part of the evidence given by Mims and Davis. If, as the court below charged the jury, such corroboration had been necessary to a conviction based on accomplice testimony, and if no other corroboration had been present, an erroneous failure to tell the jury that Rollins too was an accomplice might have provided appellant with an arguable position. But when no such corroboration was required, when other corroboration was present, and when the instructions gave appellant a protection to which he was not entitled, it is difficult to understand the claim that an alleged error in the instruction on Rollins'

limited and purely cumulative testimony affected his substantial rights.

An appellate court may not reverse a conviction for error unless the record leaves it "in grave doubt as to whether the error had substantial influence in bringing about a verdict." *Krulewitch* v. *United States*, 336 U.S. 440, 444–445 (1949); *Kotteakos* v. *United States*, 328 U.S. 750 (1946). As the decisions relied upon by appellant demonstrate, erroneous failure to give an accomplice instruction relating to a government witness warrants reversal only where conviction can fairly be said to rest upon the testimony of that witness. Compare *Gosset* v. *Commonwealth*, 274 Ky. 468, 118 S.W. 2d 764 (1938) (reversal because witness' testimony was the only evidence incriminating defendant) with *Fox* v. *Commonwealth*, 248 Ky. 466, 58 S.W. 2d 608 (1933) (no substantial prejudice because witness' testimony was fully corroborated by other witnesses). See also *Johnson* v. *Commonwealth*, 274 Ky. 799, 120 S.W. 2d 411 (1938). Significantly, even though the government's principal witness was involved, this Court's reversal in *Egan* v. *United States*, *supra*, was not predicated upon erroneous refusal of the trial judge to grant a requested accomplice instruction. Conviction was reversed because numerous instances of judicial misconduct, when considered in their entirety, deprived the defendant of "a fair and impartial trial." 52 App. D.C. at 397; 287 Fed., at 971. When measured against these precedents, it is clear that the alleged error of which appellant belatedly complains was necessarily harmless.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the district court should be affirmed.

OLIVER GASCH,
United States Attorney.
CARL W. BELCHER,
JEROME A. COHEN,
Assistant United States Attorneys.

U. S. GOVERNMENT PRINTING OFFICE: 1959